No. 86-357

Supreme Court, U.S.
FILED
JAN 27 1987
JOSEPH F. SPANIOL, JR.
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1986

AMERICAN TRUCKING ASSOCIATIONS, INC., *et al.*,
Appellants

v.

JAMES I. SCHEINER, SECRETARY OF THE DEPARTMENT OF REVENUE, *et al.*,
Appellees

On Appeal from the Supreme Court of Pennsylvania

JOINT APPENDIX

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JURISDICTIONAL STATEMENT FILED SEPTEMBER 3, 1986
PROBABLE JURISDICTION NOTED NOVEMBER 10, 1986

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COMMONWEALTH COURT OF PENNSYLVANIA

No. 315 C.D. 1982

AMERICAN TRUCKING ASSOCIATIONS, INC., *et al.*,
Petitioners

v.

ROBERT K. BLOOM, SECRETARY OF THE DEPARTMENT OF REVENUE OF THE COMMONWEALTH OF PENNSYLVANIA, *et al.*,
Respondents

RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
1982	
Feb 16	Complaint filed.
	* * * *
" 25	Stipulation regarding refunds filed and approved.
	* * * *
May 18	Order certifying class action.
	* * * *
1983	
June 13	Order scheduling trial for June 16, 1983.
	* * * *
Sept 19	Argument heard before Judge Williams, Jr.
Oct 17	Memorandum Opinion and Order filed (J. Williams, Jr.), invalidating marker fee and ordering refunds of payments for identification markers for the year beginning April 1, 1982 to proceed in accordance with Stipulation of the parties.

DATE	PROCEEDINGS
1983	
Oct 27	Respondents' exceptions filed.
	* * * *
1984	
Dec 11	Oral argument held (before the Court en banc).
Feb 5	Opinions and Order filed overruling exceptions to the Opinion and Order of Judge Robert W. Williams, Jr., dated October 17, 1983.

COMMONWEALTH COURT OF PENNSYLVANIA

No. 267 C.D. 1983

AMERICAN TRUCKING ASSOCIATIONS, INC., *et al.*,
Petitioners

v.

ROBERT K. BLOOM, SECRETARY OF THE DEPARTMENT OF REVENUE OF THE COMMONWEALTH OF PENNSYLVANIA, *et al.*,
Respondents

RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
1983	
Jan 28	Petition filed.
	* * * *
Feb 11	Stipulation concerning refunds filed.
	* * * *
Mar 1	Answer filed.
	* * * *
" 23	Petitioners' Reply filed.
	* * * *
Dec 12	Order certifying class action.
1984	
Feb 29	Additional Stipulation concerning refunds filed.
	* * * *
Apr 19	Petitioners' Motion for Summary Judgment filed.
	* * * *

DATE	PROCEEDINGS
1984	
Aug 24	Respondents' Motion for Summary Judgment filed.
	* * * *
Sept 12	Petitioners' Answer to Respondents' Motion for Summary Judgment filed.
	* * * *
Dec 11	Argued (before the Court en banc).
1985	
Feb 5	Opinion filed. (J. Williams, Jr.) Dissenting (President Judge Crumlish, Jr. and Judge Barry).
" 5	Petitioners' motion for summary judgment is granted. The Axle Tax is hereby declared to be violative of the Commerce Clause of the United States Constitution. Refunding of Axle Tax payments for tax years beginning April 1, 1983 shall proceed in accordance with the parties' Stipulations.

COMMONWEALTH COURT OF PENNSYLVANIA

No. 160 C.D. 1984

AMERICAN TRUCKING ASSOCIATIONS, INC., *et al.*,
Petitioners

v.

JAMES I. SCHEINER, SECRETARY OF THE DEPARTMENT OF REVENUE OF THE COMMONWEALTH OF PENNSYLVANIA, *et al.*,
Respondents

RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
1984	
Jan 17	Petition filed.
	• • • •
Feb 21	Respondents' Preliminary Objections to Petition for Review filed.
	• • • •
" 26	Respondents' Brief in Support of Preliminary Objection filed.
Aug 27	Brief of Petitioners in Opposition to the Preliminary Objections of Respondents filed.
	• • • •
Dec 11	Argued (before the Court en banc).
1985	
Feb 7	Opinion filed sustaining Respondents' preliminary objection (J. MacPhail). Dissenting (President Judge Crumlish, Jr. and Judge Williams, Jr.).

SUPREME COURT OF PENNSLYVANIA
MIDDLE DISTRICT

Nos. 11, 12 & 19 M.D. Appeal Dockets 1985

AMERICAN TRUCKING ASSOCIATIONS, INC., *et al.*,
Appellees,

v.

JAMES I. SCHEINER, SECRETARY OF THE DEPARTMENT OF REVENUE, *et al.*,
Appellants.

RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
1985	
Mar 21	Original Record one part filed (Case No. 19, appeal from Commonwealth Court No. 160 C.D. 1984).
Apr 11	Original Record filed (Cases No. 11 and No. 12, appeals from Commonwealth Court Nos. 315 C.D. 1982 and 267 C.D. 1983).
Apr 24	Supplemental Record filed (Case No. 19).
1986	
May 6	Decision reversed in part; Affirmed in part, Larsen, J. Mr. Chief Justice Nix files a Concurring and Dissenting Opinion in which Mr. Justice McDermott joins. (Cases No. 11, No. 12, and No. 19).

MARKER FEE CASE

IN THE COMMONWEALTH COURT
OF PENNSYLVANIA

No. 315 C.D. 82

CLASS ACTION

AMERICAN TRUCKING ASSOCIATIONS, INC.
1616 "P" Street, N.W.
Washington, D.C. 20036,

OLD DOMINION FREIGHT LINE, INC.
P.O. Box 2006,
High Point, North Carolina 27261,

and

ANDERSON TRUCKING SERVICE, INC.
203 Cooper Avenue North,
Saint Cloud, Minnesota 56301,

individually and on behalf of a class of
interstate motor carriers similarly situated,
Plaintiffs,

v.

ROBERT K. BLOOM, Secretary of the
Department of Revenue of the
Commonwealth of Pennsylvania
11th Floor Strawberry Square
Harrisburg, PA 17127,

LEROY S. ZIMMERMAN, Attorney General
of the Commonwealth of Pennsylvania,
16th Floor Strawberry Square
Harrisburg, PA 17127, and

DANIEL F. DUNN, Commissioner of the State Police
of the Commonwealth of Pennsylvania
1800 Elmerton Avenue
Harrisburg, PA 17109,
Defendants.

COMPLAINT, OR IN THE ALTERNATIVE, PETITION FOR REVIEW

Nature of the Action

1. This is a class action seeking to enjoin and have declared unconstitutional under both the United States and Pennsylvania Constitutions the road tax identification marker requirement imposed upon interstate motor carrier vehicles in Section 2102 of the Vehicle Code, 75 Pa. C.S. § 2102. This amendment to the Vehicle Code took effect on August 18, 1980, and requires each motor carrier vehicle (defined as "a truck, truck tractor or combination having a gross weight or registered gross weight in excess of 17,000 pounds") entering into the Commonwealth to bear an identification marker costing $25.00 per year to demonstrate its compliance with the Motor Carrier Road Tax Act, 72 P.S. § 2617.1, et seq. An exception, however, is provided "for vehicles registered in this Commonwealth"; for such vehicles registered in Pennsylvania "the vehicle identification marker shall be deemed a part of and included in the vehicle registration fee."

2. The plaintiffs, on behalf of themselves and the class of all interstate motor carriers similarly situated, contend and in this action seek to prove that Section 2102 of the Vehicle Code, on its face and in its practical effect:

(a) discriminates against and burdens interstate commerce in violation of the Commerce Clause of the U.S. Constitution, Article I, Section 8;

(b) deprives out-of-state motor carriers of rights and subjects them to obligations not shared by motor carriers registered in the Commonwealth in violation of the Privileges and Immunities Clause of the U.S. Constitution, Article IV, Section 2;

(c) is incompatible with and contrary to federal law and regulations on a subject matter in which the federal

standards preempt and preclude inconsistent state requirements in violation of the Supremacy Clause of the Constitution, Article VI, Section 2;

(d) deprives out-of-state motor carriers of the equal protection of the laws in violation of the Fourteenth Amendment to the U.S. Constitution and of rights, privileges or immunities secured by the Constitution and laws of the United States in violation of 42 U.S.C. § 1983; and

(e) constitutes a tax upon a single class of subjects within the territorial limits of the Commonwealth, which tax is not uniform in its impact upon out-of-state motor carriers and motor carriers registered in Pennsylvania in violation of the uniformity provision of the Pennsylvania Constitution, Article 8, Section 1.

3. In the alternative, in Count VII of the Complaint, plaintiffs seek a declaration that motor carrier vehicles registered in states with which the Commonwealth of Pennsylvania has entered into bilateral apportioned registration reciprocity agreements pursuant to the authority declared in Section 6141 et seq. of the Vehicle Code, 75 Pa. C.S. § 6141-6153, shall be deemed to be "vehicles registered in this Commonwealth" and thus exempt from the payment of the identification marker fee under Section 2102(b) of the Vehicle Code, 75 Pa. C.S. § 2102(b). For the purpose of that Count of the Complaint, plaintiffs seek to certify a class limited to carriers operating motor carrier vehicles registered in any of those states which have entered into apportioned registration reciprocity agreements with Pennsylvania.

• • • •

Count I—Discrimination against Interstate Commerce

41. The averments of paragraphs 1-40 are incorporated herein as if fully set forth below.

42. The imposition of a yearly $25.00 marker fee exclusively upon motor carrier vehicles registered outside of Pennsylvania for the privilege of using the highways of the Commonwealth in interstate commerce constitutes invidious and unlawful discrimination against interstate commerce insofar as it imposes burdens on interstate motor carriers in order to conduct interstate commerce in Pennsylvania that are not shared by Pennsylvania-based carriers.

43. The reference in Section 2102 to the fact that Pennsylvania-based motor carrier vehicles have paid the $25.00 marker fee as part of their registration fee is purely a pretext to disguise facial discrimination against interstate commerce in that any increases in such registration fees enacted in Act 68 were independent of and not correlative to the increase from $2.00 to $25.00 in the amount of the identification marker fee.

44. Under Article I, Section 8 of the United States Constitution, discrimination against interstate commerce, such as by conditioning the right of an interstate motor carrier to utilize the highways of Pennsylvania upon the payment of fees or costs not shared by carriers registered in Pennsylvania, is unlawful.

Count II—Burden upon Interstate Commerce

45. The averments of paragraphs 1-40 are incorporated herein as if fully set forth below.

46. The $25.00 marker fee imposed upon out of state motor carrier vehicles wishing to utilize the highways of Pennsylvania in order to conduct interstate commerce, regardless of how minimal or infrequent are the contacts of such vehicles with Pennsylvania, constitutes an unlawful burden upon interstate motor carriers because:

(a) It is imposed irrespective of the existence of any substantial nexus between the affected interstate motor carriers and the Commonwealth of Pennsylvania;

(b) It is imposed without any regard or concern for the magnitude of the affected motor carrier's business within the Commonwealth of Pennsylvania or any apportionment based upon the relative magnitude of an affected motor carrier's business within Pennsylvania and the carrier's gross volume of business in all states;

(c) It is facially discriminatory between Pennsylvania-based carriers and carriers based in other jurisdictions;

(d) It is wholly unrelated to the volume, value or nature of the services provided by the Commonwealth of Pennsylvania to any affected interstate motor carrier; and

(e) It is wholly unrelated to the magnitude or nature of any benefit received by or conferred upon any affected interstate motor carrier by the Commonwealth of Pennsylvania or arising from the operations of an affected motor carrier within the Commonwealth of Pennsylvania.

47. For this reason, the $25.00 marker fee imposed by Section 2102 upon each and every interstate motor carrier vehicle registered beyond the borders of the Commonwealth and wishing to utilize the highways of Pennsylvania in interstate commerce constitutes an unlawful burden upon such commerce under Article I, Section 8 of the United States Constitution.

* * * *

Count VII—Discrimination Against Interstate Motor Carriers with Vehicles Registered in States with which Pennsylvania Has Entered into Apportioned Registration Reciprocity Agreements

62. The averments of paragraphs 1-40 are incorporated herein as if fully set forth below.

63. The application of the requirements of Section 2102 to interstate motor carriers whose vehicles are registered in states with which Pennsylvania has entered

into apportioned registration reciprocity agreements compels such carriers to pay a greater total for registration and marker fees to Pennsylvania than will carriers subject to the same agreements and traveling the same proportion of miles in Pennsylvania whose vehicles are Pennsylvania-based.

64. Such discrimination against interstate motor carriers based solely upon the fact that their vehicles are registered outside of Pennsylvania is facially violative of the Commerce Clause.

65. Under Section V(B) of the International Registration Plan, however, carriers registered in one such state are supposed to be treated as fully registered in every jurisdiction in which the agreement is in effect.

66. Accordingly, to avoid such patent discrimination against interstate motor carriers from states with which Pennsylvania has entered into apportioned registration reciprocity agreements, this Court should, pursuant to Section V(B) of the International Registration Plan, declare such vehicles to be deemed registered in the Commonwealth of Pennsylvania and therefore exempt under Section 2102(b) from payment of the $25.00 marker fee by virtue of such registration.

WHEREFORE, plaintiffs pray this Honorable Court:

1. To declare that Section 2102 of Title 75 is unlawful, unconstitutional and void insofar as the $25.00 identification marker fee it imposes upon interstate motor carriers to travel upon the highways of this Commonwealth violates the Commerce Clause, the Privileges and Immunities Clause, the Supremacy Clause, and the Fourteenth Amendment to the United States Constitution, Article VIII, Section 1 of the Pennsylvania Constitution, and 42 U.S.C. § 1983.

2. To enjoin all enforcement of Section 2102 of Title 75 by defendants and persons within their jurisdiction, authority and control, including the enforcement mechanisms provided in Section 2103 and 2104 of Title 75.

3. To order defendants immediately to refund and disgorge any $25.00 payments received from interstate motor carriers on account of marker fees for the year commencing April 1, 1982.

4. To grant such other relief as may be deemed appropriate, including costs and attorney's fees under 42 U.S.C. § 1988.

Alternatively, on behalf of a class of all motor carriers with vehicles registered in any states with which Pennsylvania has entered into bilateral apportioned registration reciprocity agreements, pursuant to Count VII of the Complaint, plaintiffs pray this Honorable Court:

1. To declare that such vehicles shall be considered registered in the Commonwealth of Pennsylvania so as to be exempt from the $25.00 marker fee under Section 2102(b).

2. To enjoin all enforcement of Section 2102 of Title 75, including by the means set forth in Sections 2103 and 2104 of Title 75 against such plaintiffs.

3. To order defendants immediately to refund and disgorge any $25.00 marker fee payments received from such interstate motor carriers for the year commencing April 1, 1982.

4. To grant such other relief as may be deemed appropriate, including costs and attorney's fees under 42 U.S.C. § 1988.

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IN THE COMMONWEALTH COURT
OF PENNSYLVANIA

No. 315 C.D. 1982

CLASS ACTION

AMERICAN TRUCKING ASSOCIATIONS, INC, *et al.*,
Petitioners

v.

ROBERT K. BLOOM, Secretary of the
Department of Revenue, *et al.*,
Respondents

ANSWER AND NEW MATTER

Defendants hereby interpose and file their answer and new matter:

ANSWER

1-3. ADMITTED only insofar as these paragraphs purport to characterize the nature of the instant action. LEGAL CONCLUSIONS herein require NO RESPONSE.

• • • •

41. The answers to paragraphs 1-40 are incorporated herein as if fully set forth.

42. DENIED that the twenty-five dollar ($25.00) marker fee is imposed only upon motor vehicles registered outside of Pennsylvania. To the contrary, Pennsylvania-registered vehicles pay the twenty-five dollar ($25.00) fee. LEGAL CONCLUSIONS herein require NO RESPONSE.

43-44. DENIED. States LEGAL CONCLUSIONS as to which NO RESPONSE is required.

45. The answers to paragraphs 1-40 are incorporated herein as if fully set forth.

46-47. DENIED. States LEGAL CONCLUSIONS as to which NO RESPONSE is required.

* * * *

62. The answers to paragraphs 1-40 are incorporated herein as if fully set forth.

63. DENIED. To the contrary, vehicles registered in states with which Pennsylvania has bilateral apportioned registration agreements and Pennsylvania vehicles which travel through states with which Pennsylvania has bilateral apportioned registration agreements pay the same registration and marker fees, assuming that such vehicles travel the same proportion of miles in the various jurisdictions which are parties to bilateral agreements.

64. DENIED. States LEGAL CONCLUSIONS as to which NO RESPONSE is required.

65. ADMITTED that the International Registration Plan so requires. DENIED that this plan is applicable to the marker fee at issue since the plan does not cover marker fees and Pennsylvania is not a party to the plan.

66. DENIED. States LEGAL CONCLUSIONS as to which NO RESPONSE is required.

NEW MATTER

67. The marker fee applies to Pennsylvania-registered vehicles and to vehicles using Pennsylvania roads.

68. The marker fee applies only to activities with a substantial nexus to the Commonwealth.

69. The marker fee is paid exclusively into the Motor License Fund.

70. The Motor License Fund is used for road repair, maintenance, construction and other related purposes.

71. The monies paid into the Motor License Fund in fiscal year 1980-81 by virtue of the marker fee, fuel tax and other charges imposed upon out-of state vehicles for use of the roads were fully expended exclusively for road repair, maintenance, construction and related purposes.

• • • •

76. The marker fee is a charge for the privilege of using Pennsylvania roads.

IN THE COMMONWEALTH COURT
OF PENNSYLVANIA

No. 315 C.D. 1982

CLASS ACTION

AMERICAN TRUCKING ASSOCIATIONS, INC., *et al.*,
Petitioners,

v.

ROBERT K. BLOOM, Secretary of the
Department of Revenue, *et al.*,
Respondents.

PETITIONERS' REPLY TO RESPONDENTS' NEW MATTER

Petitioners, American Trucking Associations, Inc., et al., reply to respondents' New Matter, in accordance with the paragraph numbers thereof, as follows:

* * * *

68. DENIED. Petitioners are advised that the allegation of this paragraph constitutes a conclusion of law to which no response is required. To the extent that facts are alleged in this paragraph, the allegation is DENIED AS STATED. While a vehicle which does not enter the Commonwealth need not display an identification marker, the nature of the interstate transportation services provided by petitioners and their fellow class members requires them to qualify substantially all of their vehicles for operation in Pennsylvania, notwithstanding that in any given year, some of those vehicles may never enter into the Commonwealth or may travel only a few miles upon the roads of the Commonwealth. By way of further

answer, the averments of paragraphs 14-18 of the Petition for Review are incorporated herein.

* * * *

76. ADMITTED IN PART AND DENIED IN PART AND PROOF DEMANDED. Petitioners agree with respondents' characterization of the vehicle identification marker fee as a privilege tax. As to the remainder of the allegation of this paragraph, after reasonable investigation, petitioners are without sufficient knowledge or information to form a belief as to the truth of the allegation.

IN THE COMMONWEALTH COURT
OF PENNSYLVANIA

No. 315 C.D. 1982

CLASS ACTION

AMERICAN TRUCKING ASSOCIATIONS, INC., *et al.*,
Petitioners,

v.

ROBERT K. BLOOM, *et al.*,
Respondents.

ORDER

AND NOW, this 18 day of May, 1982, pursuant to the Stipulation of counsel for the respective parties to this action, it is

ORDERED AND DECREED

that:

1. This action shall be certified to proceed as a class action.

2. The class to be represented by the named petitioners in connection with Counts I-VI of their Petition for Review is certified to consist of all interstate carriers whose motor carrier vehicles are registered outside of Pennsylvania and are subject to the road tax identification marker requirement of Section 2102 of the Vehicle Code and who now are or may in the future become liable for payment of the yearly marker fee of $25.00 on account of such motor carrier vehicles.

3. The subclass to be represented by the named petitioners in connection with Count VII of their Petition for

Review is certified to consist of all interstate carriers whose motor carrier vehicles are registered in any of the states or provinces with which Pennsylvania has entered into bilateral apportioned registration reciprocity agreements, whose vehicles are subject to the road tax identification marker requirement of Section 2102 of the Vehicle Code, and who now are or may in the future become liable for payment of the yearly marker fee of $25.00 on account of such motor carrier vehicles.

/s/ John A. MacPhail

IN THE COMMONWEALTH COURT
OF PENNSYLVANIA

No. 315 C.D. 1982

CLASS ACTION

AMERICAN TRUCKING ASSOCIATIONS, INC., *et al.*,
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v.

ROBERT K. BLOOM, Secretary of
the Department of Revenue, *et al.*,
Respondents.

JOINT STIPULATION OF FACTS

The parties to the captioned action stipulate that the following facts are true and undisputed. The parties reserve argument as to the relevancy of some of these facts.

I. *Nature of The Marker Fee*

1. The $25 marker decal fee is a tax for the privilege of using Pennsylvania roads.

2. For vehicles registered in Pennsylvania the marker fee "shall be deemed a part of and included in the vehicle registration fee." 75 Pa. C.S. § 2101(b).

3. The marker fee is imposed upon motor carrier vehicles which have gross weight, or registered gross weight, in excess of 17,000 pounds. The parties disagree as to the application of the marker fee requirement to Pennsylvania-registered vehicles.

4. Marker fees are credited to the Motor License Fund.

5. Motor License Fund moneys are expended for road-related purposes.

6. The administrative costs associated with the marker decal requirement total approximately $5.00 per vehicle.

II. *Petitioners' Operations*

7. Petitioner American Trucking Associations, Inc. ("ATA") is a national non-profit corporation organized and operating under the non-profit corporation laws of the District of Columbia and with its principal place of business located there. ATA is a federation of 51 state trucking associations, including the District of Columbia and 13 national conferences. It represents every type and geographical scope of motor carrier operation in the United States. It represents over 10,000 interstate for-hire carriers, and tens of thousands of private and local carriers, many of whose motor carrier vehicles are registered and qualified for operation within the Commonwealth of Pennsylvania and are subject to the requirements of 75 Pa. C.S.A. § 2102(b) ("Section 2102(b)").

8. "Qualified for operation" has the following meaning: The display of the required indicia in order to lawfully operate over the highways of the Commonwealth.

9. Petitioner Old Dominion Freight Line, Inc. ("Old Dominion") is a Virginia corporation with its principal place of business located in North Carolina. It is an interstate motor carrier as defined in the Interstate Commerce Act operating under certificates of authority issued by the Interstate Commerce Commission. At present it operates approximately 814 motor carrier vehicles, all of which are registered and qualified for operation within the Commonwealth of Pennsylvania and are subject to the requirements of Section 2102(b).

10. Petitioner Anderson Trucking Service, Inc. ("Anderson Trucking") is a Minnesota corporation with its principal place of business located in Minnesota. It is an

interstate motor carrier as defined in the Interstate Commerce Act operating under certificates of authority issued by the Interstate Commerce Commission. At present it operates approximately 492 motor carrier vehicles, all of which are registered and qualified for operation within the Commonwealth of Pennsylvania and are subject to the requirements of Section 2102(b).

11. During the most recent period for which statistics are available, calendar year 1981, the 814 motor carrier vehicles of petitioner Old Dominion travelled a total of 66,739,086 miles. Dividing 66,739,086 by 814, Old Dominion's vehicles travelled an average of 81,989 miles each everywhere.

12. Old Dominion's vehicles travelled a total of 2,216,952 miles in Pennsylvania in 1981. Dividing 2,216,952 by 814, these vehicles travelled an average of 2,724 miles each in Pennsylvania.

13. The number of Old Dominion's vehicles which travelled in Pennsylvania, and the number of Pennsylvania miles travelled by each, is not presently known. There is no assertion in paragraph 12 that all or most of Old Dominion's vehicles did travel in Pennsylvania.

14. Petitioner Old Dominion's 814 motor carrier vehicles travelled 2,216,952 miles in Pennsylvania, which is 3.32 percent of the carrier's total mileage.

15. Old Dominion paid the $25.00 marker decal fee for a marker effective for the year beginning April 1, 1981, for each of its 814 vehicles, plus 231 replacement vehicles, at a total cost of $26,125.

16. During the months January, February and March, 1981, Old Dominion's vehicles bore marker decals effective for the annual period ending March 31, 1981, most of which had cost $2 each and some of which had cost $25.

17. The average cost of the markers per mile travelled in Pennsylvania to petitioner Old Dominion for calendar year 1981 was $.0117, based on a marker decal cost of $25 each.

18. During the most recent period for which statistics are available, calendar year 1981, the 492 motor carrier vehicles of petitioner Anderson Trucking travelled a total of 25,379,399 miles. Dividing 25,379,399 by 492, Anderson's vehicles traveled an average of 51,584 miles each everywhere.

19. Anderson's vehicles travelled a total of 967,507 miles in Pennsylvania in 1981. Dividing 967,507 by 492, these vehicles travelled an average of 1,966 miles each in Pennsylvania.

20. The number of Anderson's vehicles which travelled in Pennsylvania, and the number of Pennsylvania miles travelled by each, is not presently known. There is no assertion in paragraph 19 that all or most of Anderson's vehicles did travel in Pennsylvania.

21. Petitioner Anderson's 492 motor carrier vehicles travelled 967,507 miles in Pennsylvania, which is 3.81 percent of the carrier's total mileage.

22. Anderson Trucking paid the $25.00 marker decal fee for a marker effective for the year beginning April 1, 1981 for each of its 492 vehicles, plus 62 replacement vehicles, at a total cost of $13,850.

23. During the months January, February and March, 1981, Anderson's vehicles bore marker decals effective for the annual period ending March 31, 1981, most of which had cost $2 each and some of which had cost $25.

24. The average cost of the markers per mile traveled in Pennsylvania to petitioner Anderson Trucking in 1981 was $.0143, based on a marker decal cost of $25 each.

25. Apache Tomato Co., Inc., is a corporation organized under the laws of New Jersey with its principal office located in Colts Neck, New Jersey. During 1981, the company operated three 2-axle trucks in the marketing of tomatoes. In 1981, the three company vehicles made nine trips between Apache's Colts Neck office and the Food Center located at the Philadelphia side of the Walt Whitman Bridge. The three vehicles display the Pennsylvania fuel tax marker. In making their nine trips in 1981 to the Food Center, the company's vehicles operated 6 miles over Pennsylvania roads.

26. The number of Pennsylvania miles travelled by each of Apache Tomato's vehicles is not presently known. There is no assertion in paragraph 25 that all or most of Apache's vehicles did travel in Pennsylvania.

27. A. Leander McAlister Trucking ("McAlister") is a corporation organized under the laws of Texas with its principal office located in Wichita Falls, Texas. The company operates a variety of trucking equipment as an irregular route motor common carrier certified by the Interstate Commerce Commission in MC43867. It provides service to the 48 continental United States and the District of Columbia. McAlister transports oil field commodities such as pipe, machinery and drilling rigs, heavy equipment, iron and steel articles and building materials. The entire fleet is qualified each year for travel throughout the contiguous 48 continental states.

28. In 1981, McAlister purchased 290 Pennsylvania identification markers for its 290 vehicles, at a cost of $7,250. The fleet accumulated 46,844 miles in Pennsylvania. McAlister's Pennsylvania mileage in 1981 represented less than one-half of one percent of its total fleet mileage of 10,141,955 miles. During the year 1981 the company incurred a fuel tax liability in Pennsylvania of $1,325.65.

29. The number of McAlister's vehicles which travelled in Pennsylvania, and the number of Pennsylvania miles travelled by each, is not presently known. There is no assertion in paragraph 28 that all or most of McAlister's vehicles did travel in Pennsylvania.

30. Great Basin Truck Rental, Inc. ("Great Basin") is a corporation organized under the laws of Utah with its principal offices located in Salt Lake City, Utah. The company's principal business activity is the renting and leasing of motor carrier vehicles to both private and for-hire motor carriers. The company maintains a rental fleet of approximately 150 motor carrier vehicles including 30 heavy duty inter-city truck-tractors. Its vehicles other than heavy-duty truck tractors, are used by its lessees almost exclusively within 500 miles of its rental facilities. Great Basin's lessees sometimes rent and operate one or more of its heavy duty truck-tractors to, from and through points in a wide area including all states west of the Mississippi River and the States of Illinois, Indiana, Ohio, Pennsylvania and New York. Generally, Great Basin receives little, if any, advance notice that a lessee will require the rental of one of its heavy duty truck-tractors to operate in any one of these states.

31. In 1981 Great Basin's 30 heavy duty truck-tractors operated 399,552 miles everywhere and 2,152 miles in Pennsylvania. The company purchased 30 identification markers for these vehicles in 1981 at a total cost of $750. The total fuel tax liability of the company in Pennsylvania in 1981 was $71.37.

32. The number of Great Basin's vehicles which travelled in Pennsylvania, and the number of Pennsylvania miles travelled by each, is not presently known. There is no assertion in paragraph 31 that all or most of Great Basin's vehicles did travel in Pennsylvania.

33. The class represented by the named petitioners in connection with Counts I-VI of their Petition for Review has been certified to consist of all interstate carriers whose motor carrier vehicles are registered outside of Pennsylvania and are subject to the road tax identification marker requirement of Section 2102 of the Vehicle Code and who now are or may in the future become liable for payment of the yearly marker fee of $25.00 on account of such motor carrier vehicles.

34. The subclass represented by the named petitioners in connection with Count VII of their Petition for Review has been certified to consist of all interstate carriers whose motor carrier vehicles are registered in any of the states or provinces with which Pennsylvania has entered into bilateral apportioned registration reciprocity agreements, whose vehicles are subject to the road tax identification marker requirement of Section 2102 of the Vehicle Code, and who now are or may in the future become liable for payment of the yearly marker fee of $25.00 on account of such motor carrier vehicles.

35. Pursuant to Section 2102, the Commonwealth has received payment of a marker fee of $25.00 per vehicle, for vehicles operated on Pennsylvania roads, from most members of the petitioner classes for the issuance of marker decals effective for the period from April 1, 1982 to March 31, 1983.

36. Exhibit 1 is a tabulation of the fuel reporting laws of all fifty states and the District of Columbia with respect to vehicle identification marker fees.

37. If each state in which plaintiff Old Dominion operates amended its fuel reporting laws to require that all vehicles entering the state bear an identification marker which cost $25.00, and if Old Dominion purchased markers for the same vehicles, under these circumstances, as it actually did in 1981, from each state in which it operates its vehicles, the cumulative impact

of such fees on plaintiff would be approximately $350,000.00.

38. The prices which motor carriers charge their customers are based, *inter alia*, on costs of doing business, including highway user fees imposed by the states in which the carriers' vehicles operate.

39. Old Dominion's net pre-tax income in fiscal year 1981 was $51,410.

40. Old Dominion's 1981 rates did not reflect the costs hypothetically associated with markers described in paragraph 37.

41. If each state in which plaintiff Anderson Trucking operates amended its fuel reporting laws to require that all vehicles entering the state bear an identification marker which cost $25.00, and if Anderson purchased markers for the same vehicles, under these circumstances, as it actually did in 1981, from each state in which it operates its vehicles, the cumulative impact of such fees on plaintiff would be approximately $446,000.00.

42. Anderson's net pre-tax income for fiscal year 1981 was $2,531,726.

43. Anderson's 1981 rates did not reflect the costs hypothetically associated with markers described in paragraph 41.

44. To the extent that states offer temporary trip permits in lieu of marker decals at reasonable costs such as the Pennsylvania fee of $5.00, (See Stipulation 161, *infra.*) petitioners Old Dominion and Anderson Trucking might be able to reduce the hypothetical costs of compliance indicated in paragraphs 37 and 41 by using trip permits where such permits would meet their operating needs.

45. The hypothetical compliance cost indicated in paragraphs 37 and 41 might also be lowered if petition-

ers Old Dominion and Anderson Trucking purchased marker decals only for the states in which each vehicle actually operated. The parties disagree as to whether petitioners Old Dominion and Anderson Trucking can adequately predict which vehicles will operate in which states, thereby making it possible to avoid qualifying all of their vehicles for operation in each state for which they have federal authority.

III. *Commonwealth's Use of the Marker Fee and Certain Other Revenues Credited to the Motor License Fund*

46. Among the Motor License Fund expenditures directly benefiting motor carriers operating in Pennsylvania are expenditures for highway maintenance, highway construction, state police and construction bond debt service.

47. For the period April 1, 1981 through March 3, 1982, Motor License Fund expenditures in these categories were as follows (rounded to the nearest thousand):

Highway Maintenance	$524,986,000
Highway Construction (non-bond-funded)	79,681,000
State Police	104,200,000
Debt Service—Principal	63,655,000
Debt Service—Interest	105,428,000
Total	$877,950,000

48. Eighty-eight percent (88%) of the expenditures listed in paragraph 47 relates to highway construction and maintenance, when construction bond interest is included in computing the percentage. When construction bond interest is excluded, seventy-six percent (76%) of the expenditures listed in paragraph 47 relate to highway construction and maintenance. The parties disagree as to whether interest should be included.

49. For the period April 1, 1982 through November 30, 1982 (the most recent period for which figures are

available), Motor License Fund expenditures in these categories were as follows (rounded to the nearest thousand):

Highway Maintenance	$448,728,000
Highway Construction (non-bond-funded)	74,030,000
State Police	57,300,000
Debt Service—Principal	31,710,000
Debt Service—Interest	61,370,000
Total	$673,138,000

50. Ninety-two percent (92%) of the expenditures listed in paragraph 49 relate to highway construction and maintenance, when construction bond interest is included in computing this percentage. When construction bond interest is excluded, eighty-two (82%) of the expenditures listed in paragraph 49 relate to highway construction and maintenance. The parties disagree as to whether interest should be included.

51. For the period April 1, 1981 through November 30, 1982, Motor License Fund expenditures directly benefitting operators of vehicles which are subject to the marker fee totalled at least $1,551,088,000.

52. The expenditures referred to in paragraph 51 benefit operators of vehicles which do not pay the marker fee, including automobiles, other non-trucks, and trucks under 17,000 pounds, which use Pennsylvania roads.

53. Use of Pennsylvania roads by vehicles which are wider and heavier than automobiles necessitates higher road-related expenditures than would use of the roads by automobiles and other lightweight vehicles alone. These higher costs are incurred, *inter alia*, in the following categories: construction of road bases and surfaces; construction of bridges; paving of road shoulders; roadgrading and drainage; and truck weight facilities.

54. With the exception of certain limited segments, all of the principal routes, Interstate highways and certain four-lane facilities in Pennsylvania, are categorized as rigid pavements.

55. The *AASHTO Interim Guide for Design of Pavement Structures* defines the serviceability of a pavement as the ability to serve high-speed, high-volume automobile and truck traffic.

56. The *AASHTO Interim Guide for Design of Pavement Structures*, developed as a result of the AASHTO road test, recommends use of a "present serviceability index", a scale with a range of 0 to 5, to measure pavement serviceability. The value 5 is the highest index of serviceability (e.g., brand new road); 0 is the lowest.

57. Application of the *AASHTO Interim Guide* permits projection, based on the physical characteristics of the pavement, and an assumed traffic flow over a given period of time, of a road's expected future serviceability rating. The parties disagree as to whether this rating is hypothetical, as petitioners contend, or a reasonable projection, as respondents' contend.

58. The "terminal serviceability index" is the lowest index that will be tolerated before resurfacing or reconstruction becomes necessary.

59. AASHTO recommends a terminal serviceability index of 2.5 for major highways, 2.0 for highways with lesser traffic volumes.

60. Pavements are commonly designed to last 20 years between the time of their construction and the time they are expected to reach the terminal serviceability index.

61. During calendar year 1979, the most recent period for which detailed figures are currently available, vehicle miles travelled in Pennsylvania were approximately as follows:

Total Vehicle Miles Travelled, 1979

Total Passenger Vehicles	58,600,811,505
Auto	57,291,004,547
Motor Cycle	911,913,897
School Bus	124,376,972
Commercial Bus	273,516,089

Total Cargo Vehicles	12,844,167,335
2 Axle/4 tire	6,381,130,943
All other Single Trucks	2,806,356,994
Combination Trucks	3,656,679,398

62. Motor vehicles tend to travel primarily in the right lane of the roadway.

63. It currently costs in excess of $500,000 to pave one mile of interstate highway.

IV. *Highway User Fees*

64. All highway user charges derived from motor carrier operations conducted in the Commonwealth are credited to the Motor License Fund and expended exclusively for road-related purposes. Pennsylvania highway user charges affecting vehicles subject to the marker fee consist of:

(a) truck and truck-tractor registration fees;

(b) trailer registration fees;

(c) special hauling permit fees;

(d) Fuel Use Tax;

(e) Motor Carriers Road Tax;

(f) Oil Company Franchise Tax;

(g) Gross Receipts Tax (vehicles travelling interstate);

(h) Liquid Fuels Tax;

(i) truck and truck-tractor title fees;

(j) trailer title fees;

(k) truck and truck-tractor registration transfer fees;

(l) trailer registration transfer fees; and

(m) farm truck registration fees.

Fuel Tax And Liquid Fuels Tax

65. The Fuel Use Tax is an 11 cent per gallon tax applicable to diesel and certain other non-gasoline fuels purchased in Pennsylvania.

66. The Liquid Fuels Tax is an 11 cent per gallon tax applicable to gasoline and certain other non-diesel fuels purchased in Pennsylvania.

67. For the period April 1, 1981, through March 31, 1982, combined Fuel Use Tax and Liquid Fuels Tax revenues derived from motor carrier vehicles (i.e. vehicles with gross weight in excess of 17,000 pounds) totalled approximately $79,171,000.[1]

68. For the period April 1, 1982, through November 30, 1982, combined Fuel Use Tax and Liquid Fuels Tax revenues derived from motor carrier vehicles totalled approximately $52,191,000.

Motor Carriers Road Tax

69. The Motor Carriers Road Tax is a tax on certain liquid fuels, including gasoline and diesel fuel, calculated on the amount of fuel purchased outside of Pennsylvania but consumed on Pennsylvania roads. It excludes fuel purchased in Pennsylvania but consumed elsewhere. The tax rate is 11 cents per gallon, plus 3.5% of the average wholesale price of the fuel purchased. Motor carriers receive a credit against this tax in the amount of (a) the fuel taxes they have paid on motor fuel purchased in Pennsylvania, plus (b) 3.5% of the average wholesale price of the fuel they have purchased in the Commonwealth.

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[1] The fuel tax revenues refered to in paragraphs 66 and 67 are based on the best available estimates of miles travelled in Pennsylvania by vehicles subject to the marker fee, and the miles per gallon experienced by those vehicles. The revenues shown are thus rough approximations.

70. For the period April 1, 1981 through March 31, 1982, Motor Carriers Road Tax revenues were approximately as follows:

Road Tax	$ 5,846,855
Marker fee	10,553,654
Trip permits	320,569
Total	$16,721,078

71. For the period April 1, 1982 through November 30, 1982, Motor Carrier Road Tax Revenues were approximately as follows:

Road Tax	$4,516,219
Marker fee	2,060,665
Trip permits	221,748
Total	$6,798,632

Registration Fees

72. For the period April 1, 1981, through March 31, 1982, Pennsylvania-based single trucks which are subject to the marker fee (i.e., which weigh more than 17,000 pounds) paid total registration fees of approximately $14,326,865. This amount includes farm truck registration fees totalling $258,306.

73. For the period April 1, 1982, through November 30, 1982, the vehicles described in ¶ 72, *supra*, paid registration fees totalling approximately $10,640,939. This amount includes farm truck registration fees totalling $174,372.

74. From April 1, 1981, through March 31, 1982, Pennsylvania-based truck tractors paid registration fees totalling approximately $26,719,638. This amount includes farm truck-tractor registration fees totalling $117,498.

75. From April 1, 1982, through November 30, 1982, Pennsylvania-based truck tractors paid registration fees

totalling approximately $20,729,620. This amount includes farm truck-tractor registration fees totalling $83,294.

76. For the period April 1, 1981 through November 30, 1982, registration fees paid to Pennsylvania for vehicles, including trucks, truck-tractors and trailers, based in IRP-member[2] states other than Pennsylvania totalled $5,036,000, before refunds were paid (See Stipulations 122-125 below.) These fees are paid entirely into the Motor License Fund.

77. From April 1, 1981, through March 31, 1982, registration fees for Pennsylvania-based trailers totalled $7,063,000.

78. From April 1, 1982 through November 30, 1982, Pennsylvania-based trailer registration fees totalled $3,648,000.

79. Pennsylvania vehicle registration fees are credited exclusively to the Motor License Fund.

Special Hauling Permits

80. For the period April 1, 1981 through March 31, 1982, special hauling permit revenues, which are paid entirely into the Motor License Fund, totalled $4,842,000.

81. From April 1, 1982 through November 30, 1982, special hauling permit revenues totalled $3,142,000.

Title Fees

82. For the period April 1, 1981, through March 31, 1982, truck and truck-tractor title fees totalled approximately $4,223,862. Title fees are paid exclusively into the Motor License Fund.

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[2] IRP ("International Registration Plan") is discussed in paragraph 100, *et seq.*, *infra*.

83. For the period April 1, 1982, through November 30, 1982, truck and truck-tractor title fees totalled approximately $3,077,010.

84. From April 1, 1981, through March 31, 1982, trailer title fees totalled approximately $1,596,311.

85. From April 1, 1982, through November 30, 1982, trailer title fees totalled approximately $1,345,575.

Registration Transfer Fees

86. From April 1, 1981, through March 31, 1982, trailer registration transfer fees totalled approximately $36,916. Registration transfer fees are paid exclusively into the Motor License Fund.

87. From April 1, 1982, through November 30, 1982, trailer registration transfer fees totalled approximately $28,271.

88. For the period April 1, 1981, through March 31, 1982, truck and truck-tractor registration transfer fees totalled approximately $422,261. This includes farm truck and farm truck-tractor registration transfer fees totalling $25,294 and fees for trucks under 17,000 pounds.

89. For the period April 1, 1982, through November 30, 1982, truck and truck-tractor registration transfer fees totalled approximately $279,794. This includes farm truck and farm truck-tractor registration transfer fees totalling $20,301 and fees for trucks under 17,000 pounds.

Gross Receipts Tax

90. Each motor carrier operating in Pennsylvania is required to pay a Gross Receipts Tax of 8 mills per dollar upon the portion of its gross receipts represented by the following ratio:

$$\frac{\text{number of miles operated in Pennsylvania}}{\text{total number of miles operated}}$$

Motor carriers receive a credit against this tax in the amount of certain registration fees paid the Commonwealth.

91. Gross Receipts Tax revenues derived from vehicles operating interstate are paid into the Motor License Fund.

92. For the period April 1, 1981 through March 31, 1982, Gross Receipts Tax revenues credited to the Motor License Fund totalled $324,000.

93. From April 1, 1982 through November 30, 1982, Gross Receipts Tax revenues credited to the Motor License Fund totalled $198,000.

94. Gross Receipts Tax revenues derived from vehicles operating intrastate are credited to the General Fund.

Oil Company Franchise Tax

95. The Oil Company Franchise Tax for Highway Maintenance and Construction is a tax of 35 mills upon the dollar imposed upon revenues derived from the sale, in Pennsylvania, for marketing and distribution, of petroleum products otherwise subject to liquid fuels taxes. The Oil Company Franchise Tax took effect on July 1, 1981.

96. Oil Company Franchise Tax revenues are paid entirely into the Motor License Fund.

97. Assuming, *arguendo*, for present purposes, that this Oil Company Franchise Tax ("OCFT") is passed on to the retail fuel purchaser, motor carrier vehicles paid approximately $22,537,000 in OCFT for the period April 1, 1981, through March 31, 1982.

98. OCFT revenues derived from motor carrier vehicles totalled approximately $18,559,000 for the period April 1, 1982, through November 30, 1982.

Total Highway User Fees

99. For the period April 1, 1981, through November 30, 1982, highway user fees derived from vehicles which are subject to the marker fee totalled approximately $303,657,772.

V. *The Marker Fee and the International Registration Plan.*

100. Prior to September of 1982, Pennsylvania entered into Apportioned Registration Agreements, based upon the International Registration Plan ("IRP"), annexed hereto as Exhibit —, with twenty-three states and provinces. Apportioned registration under these Agreements was implemented in the 1982 registration year.

101. On September 15, 1982, Pennsylvania became a member jurisdiction of the IRP. Membership in the IRP automatically abrogated the Apportioned Registration Agreements. Since the terms of the IRP and all of the Agreements are essentially identical, no distinction will be drawn herein between them. Unless specifically stated otherwise, references to either the IRP or the Apportioned Registration Agreements are identical in effect.

102. Under Article III of the IRP, the registration fee for apportionable vehicles is determined: (1) by dividing the in-jurisdiction miles by the total miles during the preceding year to produce a fraction; (2) by determining the total fee required under the laws of each jurisdiction for full registration of each vehicle; and (3) by multiplying the total fee for each state by the fraction of in-jurisdiction miles to total miles applicable to that state.

103. For example, assuming a motor carrier vehicle based in Pennsylvania, state A or state B traveled 50% of its miles in the Commonwealth, 40% in state A, and 10% in state B, and assuming the full registration fees for those states were $400, $300, and $200 respectively,

the registration fees paid by that vehicle would be as follows (if states A and B are IRP-member jurisdictions—but see paragraph 104, below):

To Pennsylvania:	50% × $400 =	$200
To state A:	40% × $300 =	$120
To state B:	10 × $200 =	$ 20
Total registration fee:		$340

104. No state which is contiguous to Pennsylvania is a member of the IRP.

105. Any vehicle entering Pennsylvania necessarily travels through a state, or states, not belonging to the IRP. This travel will be referred to as "non-IRP miles".

106. Non-IRP miles and miles travelled in Pennsylvania are included in the total number of miles forming the basis of the registration fee paid to the Commonwealth by Pennsylvania-based apportioned-registered vehicles.

107. That is, a Pennsylvania-based apportioned-registered vehicle pays the Commonwealth a registration fee determined according to the following formula:

$$\text{PA. registration fee} \times \frac{\text{(total PA. miles + total non-IRP miles)}}{\text{miles travelled everywhere}}$$

108. Registration fees paid to Pennsylvania by apportioned-registered vehicles based in states other than Pennsylvania are based only on the proportion of total miles those vehicles travel in Pennsylvania.

109. By application of the principles set out in paragraphs 104-108, apportioned-registered vehicles based in IRP states other than Pennsylvania normally pay less to Pennsylvania in combined registration and marker fees than do apportioned registered vehicles based in Pennsylvania. This assumes that both classes of vehicles travel the same proportion of their total miles inside and outside of Pennsylvania.

110. The general theory underlying apportioned registration is that the same registration fees will be paid by a motor carrier vehicle based in any of the participating states to the states in which it has traveled so long as that vehicle has traveled the same proportion of miles in each state.

111. The $25 marker fee is a road-use privilege tax, not a "registration" fee subject to apportionment under the IRP. See Article III B, IRP.

112. For this reason, apportioned-registration vehicles pay the full $25 marker fee, rather than an apportioned amount of that fee based upon the proportion of miles travelled in Pennsylvania. This paragraph assumes refunds have been made to motor carriers who paid an apportioned amount of the fee. (See paragraphs 123-126.)

113. Vehicles based in states with which Pennsylvania has entered non-apportioned (full) reciprocity agreements likewise pay the full $25 marker fee.

* * * *

VII. *Transfer Of Vehicle Registration And Payment of The Marker Fee*

147. When a carrier based in a jurisdiction other than Pennsylvania transfers a vehicle registration from one vehicle to a replacement vehicle, the carrier must pay the Department of Revenue a $25.00 fee to secure another marker to be displayed on the replacement vehicle. Fuel tax markers and the associated fees required for vehicles based in jurisdictions other than Pennsylvania are not transferable.

148. When a carrier based in Pennsylvania transfers a Pennsylvania vehicle registration from one vehicle to a replacement vehicle, the carrier accomplishes the transfer pursuant to 75 Pa.C.S. § 1314. This carrier is not required to pay a second $25.00 marker fee. Deemed fuel

tax marker fees for Pennsylvania-based vehicles are transferable.

VIII. *The Marker Fee Is A Flat Tax; Total Highway User Tax Revenues And Fees Vary With Mileage and Other Factors*

149. Registration fees charged Pennsylvania-based vehicles vary with the weight of the vehicle.

150. Pennsylvania apportioned registration fees charged vehicles based in IRP-member states vary with vehicle weight.

151. Apportioned registration fees also vary with the proportion of miles travelled in Pennsylvania.

152. Permit fees charged for the hauling of overweight loads vary with the number of tons of excess weight hauled.

153. The Fuels Use Tax and the Liquid Fuels Tax are per-gallon taxes on, *inter alia*, diesel fuel and gasoline, respectively, whose total in relation to a given vehicle will vary with the number of gallons consumed, and therefore the number of miles travelled, in Pennsylvania.

154. Likewise, the Motor Carriers Road Tax and the Oil Company Franchise Tax are per-gallon taxes on liquid fuels whose totals vary, for a given vehicle, with the number of gallons consumed, and therefore, the number of miles travelled, in Pennsylvania.

155. The Gross Receipts Tax varies with the proportion of miles travelled in Pennsylvania and with the gross receipts of the carrier.

156. The $25.00 marker fee is a tax of fixed amount imposed on motor carrier vehicles for the privilege of using Pennsylvania highways, regardless of the extent of use.

157. Total taxes and fees charged a motor carrier for the use of the highways vary with number or proportion of fleet miles travelled in Pennsylvania, the weight of the vehicle operated, and the gross receipts of the carrier.

IX. *Non-Apportioned Reciprocity Agreements*

158. Registration fees paid Pennsylvania by Pennsylvania-based carriers secure for the registrant the privilege of operating the registered vehicle during the registration period over the highways of Pennsylvania and all other states with which Pennsylvania has registration reciprocity respecting that vehicle registration. The cost of such registration is attributable to operations in Pennsylvania and in other states under such reciprocity.

159. Registration fees paid by vehicles based in states with which Pennsylvania has entered non-apportioned reciprocity agreements secure for the registrant the privilege of operating the registered vehicle on the home state's roads and the roads of all other states, including Pennsylvania, with which the home state has registration reciprocity. Vehicles so registered pay no registration fee to Pennsylvania.

160. The average motor carrier vehicle operating at 80,000 pounds gross vehicle weight experiences fuel consumption of 4.9 miles per gallon. The average motor carrier vehicle operating at 60,000 pounds gross vehicle weight experiences fuel consumption of 5.3 miles per gallon. The average motor carrier vehicle operating at 40,000 pounds gross vehicle weight experiences 5.9 miles per gallon. The average motor carrier vehicle operating at 20,000 pounds gross vehicle weight experiences fuel consumption of 6.6 miles per gallon.

X. *Trip Permits*

161. Trip permits issued pursuant to Section 2101 (d) (2) are valid for the 5-day period shown on the per-

mit and for the motor carrier vehicle identified in the permit. Trip permits are issued upon the payment of a $5.00 fee to the Commonwealth.

162. During calendar year 1982, Department of Revenue agents sold approximately 3,262 temporary trip permits to drivers of vehicles subject to the marker fee who were, at the time of sale, driving, on Pennsylvania roads, non-Pennsylvania-registered vehicles for which neither marker decals nor trip permits had been obtained.

163. Trip permits may be secured by mail from the Department of Revenue. Fewer than one percent of the trip permits issued are secured in this fashion because motor carriers: a) sometimes do not have adequate advance notice of the need for a trip permit to allow them to order permits by mail; and b) where they do have such advance notice, the carrier sometimes has not decided which vehicle will be dispatched for the designated movement.

164. Over 99 percent of the trip permits used by motor carriers are secured through the several permit services which the Department of Revenue allows to transmit trip permits. The permit services: a) accept orders for trip permits by telephone; b) issue the trip permit to the motor carrier; and c) transmit the permit by wire to the locations designated by the ordering motor carrier. There are several thousand receiving locations. These locations include: 1) permit service offices; 2) carrier offices or terminals; and 3) truck stops. The permit service pays the Department of Revenue the required fee for each permit it issues.

165. The Commonwealth realizes $5.00 in revenue for each trip permit issued.

166. The motor carrier experiences a cost ranging from $10.50 to $18.00 per trip permit. This cost includes the $5.00 permit fee and the permit service fee. The total permit cost is dependent on the selection of the permit

service, the location to which the permit is to be transmitted and the gross volume of business tendered by the motor carrier to the permit service.

/s/ Arthur R. Littleton
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[TESTIMONY OF MR. PHILLIPS]

* * * *

[4] MR. PHILLIPS: Being duly sworn according to law, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LITTLETON:

Q Mr. Philips, by whom are you employed, sir?
A Department of Transportation.
Q Pennsylvania Department, and in what capacity?
A Traffic Planning Specialist.
Q And, at our request and subject to a subpoena have you examined the 1979 total vehicle miles traveled in Pennsylvania by a number of category of vehicles?
A That is correct.
Q And, have you prepared an exhibit showing your conclusions?
A Yes.

* * * *

[5] BY MR. LITTLETON:

Q You have a copy of this exhibit in your hand?
A Yes.

(Whereupon, petitioners' exhibit #1, 1979 annual [6] vehicle miles dated June 16, 1983, was presented and marked for identification.)

BY MR. LITTLETON:

Q By the way it depicts 1979, is that the last year that statistics are available?
A That's the last year that a total tabulation was made of the vehicle miles travelled in Pennsylvania by category.
Q Could you explain the front page of that exhibit to his Honor, please?

A Yes, sir. They put—again 1979 was the last year that we had a detailed tabulation of the vehicle miles of travel in Pennsylvania by category of vehicle. So, we combined that knowledge with the data that was gained by the Census of Transportation that is operated by the federal government. We combined those two studies into this exhibit in order to try to determine—to answer the question how much travel is done by out of state vehicles in Pennsylvania. And, of course, the front page there is a—is the end result and the accompanying pages are the documentation for that.

Q I direct your attention to the end result. You have divided the left hand column into single units and combinations. Would you explain briefly what the single units are and what a combination is and how you broke it down?

A Of course, the trucks—they are truck types we are talking about. And, the single units we are divided up to [7] three major types of trucks. The single unit, two axle, four tire that is where the rear tires of the vehicle is just a single tire. It is two 6 inch tires. As you go up in weight. They are required to use dual rear tires. So, the next stratification of trucks becomes a two axle 6 tire. In planning this is referred to as truck, that would be a vehicle which has six tires, as opposed to four tires, becomes a truck. That is the second stratification, two axle six tires. And, the third, of course, is the three axle vehicle, and this is the major category and it includes three axle, four axle, and any odd construction axles that might be on a single unit vehicle. That is the first stratification of trucks. The second stratification is the combinations and those are the tractor-trailer, primarily, that you see on the highway. And they—we have stratified those, primarily, by three axles—that would be a total of three axles on the entire vehicle, a four axle vehicle and a five vehicle which is the predominate vehicle on the highway in terms of combinations.

* * * *

[10] CROSS EXAMINATION

BY MR. HOFFMAN:

Q Mr. Phillips, the sample you said that these numbers were derived from a sample of, I think, 2,800 trucks, is that right?

A Yes.

Q Now, do the miles that are reflected on the front page of the exhibit related to those sampled 2,800 or to all trucks?

A To all trucks. That was strictly a random sample, and used to represent the population.

[11] Q What would be the total number of trucks in the universe of which the 2,800 is a sample?

A It is approximately 1,000,000 Pennsylvania registered trucks. It's something less than that but it is approximately 1,000,000.

Q And, do you have a view as to the accuracy of, or the degree of accuracy of the numbers and percentages that are reflected on the cover sheet?

A Yes, sir. As planning statistics go they are very weak, but I doubt that they could be improved on at all. There is not that much data available.

Q When you say that they are weak, let's take a number and say the four axle, under combinations for which the out of state is listed at 32%, and I guess the in state would be 68%, right?

A Yes, sir.

Q How accurate are those numbers likely to be?

A I would say they would be incrementally accurate. That would be reflected by the study, Census of Transportation, that incremented it in terms of 25 percent. I would say that it would be reasonable to assume that to be correct, plus or minus 25% If I might add something that statistically these figures defy any quantified accuracy, or quantifying the accuracy by standard statistical methods.

MR. HOFFMAN: That's all, thank you very much.

[12] REDIRECT EXAMINATION

BY MR. LITTLETON:

Q These are Department of Transportation figures which they, the Departemnt, uses for planning purposes and all their aspects?

A They were in 1979, yes, sir.

Q And, the Department of Transportation relies upon these figures in their planning?

A Yes, sir, they have.

Q As the best possible figures they could possibly get?

A Yes, sir.

* * * *

[TESTIMONY OF EUGENE ANGLIN]

MR. NAPOLITANO: We'd like to call Eugene Anglin.

EUGENE ANGLIN: Being duly sworn according to law, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. NAPOLITANO:

[13] Q Mr. Anglin, would you state your name for the record.

A Eugene J. Anglin.

Q And, what is your current address, Mr. Anglin?

A 306 Havenwood Drive—

MR. HOFFMAN: Your Honor, may I just ask the witness to keep his voice up. I have a little hearing problem and I have a little trouble over here.

THE WITNESS: 306 Havenwood Drive, Archdale, North Carolina.

BY MR. NAPOLITANO:

Q Are you employed, Mr. Anglin?

A Yes.

Q By whom?

A Old Dominion Freight Line.

Q And, where is your office located?

A High Point, North Carolina.

Q Mr. Anglin, what is your position with Old Dominion?

A Director of Transportation.

Q How long have you been the Director of Transportation?

A Three and a half years.

Q How long have you been with Old Dominion?

A Ten years.

Q Were you involved in the trucking industry before you joined Old Dominion?

[14] A Since July of 1953.

Q Mr. Anglin, are you knowledgeable concerning Old Dominion and its divisions and their practices with respect to qualification of motor carrier vehicles?

A Yes.

Q Would you tell me a little bit about the structure of Old Dominion and its divisions, please?

A Old Dominion is a common carrier with general commodity authority. The Old Dominion division is the "LTL" division, less than truckload shipments. The division operates Barnes Truck Lines which is a truckload hauler.

Q Does Old Dominion operate any other divisions?

A Rapid Transport which is the same as Barnes, and the both divisions operate over the same general areas that Old Dominion's "LTL" division operates over.

Q You mentioned that Old Dominion has an "LTL" or less than truckload carrier. What do you mean by that?

A Old Dominion handles shipments from five pounds to 48,000 pounds. We pick up any type of general commodity and transport it from point to point.

Q And, what would the principle routes operated by Old Dominion be?

A From the east to the south, and between the east and the south, and the southwest.

Q Primarily the eastern portion of the country?

[15] A The Mississippi eastward.

Q Do you have any knowledge as to the approximate gross revenue of Old Dominion in 1981?

A Old Dominion's approximate revenue is $92,000,000.

Q Gross revenue?

A Yes.

Q And, you also mentioned Barnes division, you said they were a truckload hauler. Would you explain what a truckload hauler is, please?

A A truckload hauler moves one, primarily one single shipment from one shipper to one consignee.

Q And, what are the principal routes operated by the Barnes division, if any?

A The same area basically that Old Dominion operates.

Q Do you have any knowledge of the approximate gross revenue of the Barnes division?

A Eighteen Million Dollars.

Q That's in 1981?

A Right.

Q You also mentioned the Rapid division, you said they were also a truckload carrier?

A Yes.

Q Do you—would you tell us the principal routes of the Rapid division?

A The Rapid division operates over the same principal [16] routes as Old Dominion and Barnes operate.

Q So all three, Old Dominion, Rapid and Barnes operate in the east coast of the United States?

A Yes, primarily.

Q Are you familiar with the term owner-operator?

A Yes.

Q Would you explain to the Court what an owner-operator is?

A To the best of my ability an owner-operator is a person that owns his own tractor and leases this tractor to a company to move freight for the said company.

Q And, do Old Dominion, Barnes or Rapid utilize any owner-operators in their operations?

A Barnes does. Rapid is entirely owner-operators, and Old Dominion does some.

Q Including these owner-operator vehicles, could you tell me approximately the number—or exactly the number of motor carrier vehicles operated by Old Dominion, Barnes, and Rapid as a group in 1981?

A Eight hundred and fourteen.

Q Would you happen to know what the number of motor carrier vehicles operated in 1982 was?

A Approximately the same.

Q Do Old Dominion, Rapid and Barnes purchase marker decals for these motor carrier vehicles?

[17] A Yes.

Q Including owner-operator vehicles?

A Yes.

Q Do you know the number of Pennsylvania marker decals purchased in 1981 by the three companies combined?

A One thousand and forty-five.

Q Do you know the number for 1982?

A Nine hundred and ninety-five.

Q Mr. Anglin, you testified that you purchased 995 and 1,045 in 1982 and 1981 respectively, and that is more than the number of trucks that you testified the three companies combined operated during that period which you said was about 814. Could you explain why you purchased more decals?

A Because of the turnover in the owner-operator divisions. A driver may lease to Old Dominion and stay for a period of 90 days or less, or half of the year, and he will leave for various reasons. And, when we replace this driver we must buy another permit.

Q Excuse me?

A The permit is not transferable.

Q So what happens to the permit you purchased and put on an owner-operated vehicle if the owner-operator leaves?

A It should be destroyed. It is no longer valid, or cannot be used because it's in the name of Old Dominion.

Q Then you purchase another decal for the new truck?

[18] A Yes.

Q Is there any way you can define approximately what percentage of your trucks turn over in the course of a year?

MR. HOFFMAN: I'm sorry. I couldn't hear the question.

BY MR. NAPOLITANO:

Q Is there any way that you can estimate or define the number of trucks that would turn over in the company within a year?

A The owner-operator approximately 20%.

Q And, how about the company as a whole?

A About 12%, probably.

Q Mr. Anglin, do you have any knowledge as to how many motor carrier vehicles operated by Old Dominion, Barnes and Rapid were qualified to operate in Pennsylvania in 1981 and 1982?

A All vehicles were.

Q You say all of the motor carrier vehicles operated by the three companies were qualified in Pennsylvania?

A All the over the road vehicles, yes.

Q Well, you said over the road vehicles as opposed to what?

A Local units that would pick up and deliver only in one city. All of the over the road vehicles were.

Q Why do you qualify all of your over the road vehicles?

A In the truckload division with Barnes and Rapid the [19] drivers must be permitted or qualified to go any where within our general operating authority. They may leave New York and go to Chicago, come back to Philadelphia, and then to Florida, New Orleans and then back. They must be permitted to go—to be allowed to go any where in our system.

Q Mr. Anglin, do you maintain records of mileage on a truck by truck basis for Old Dominion, Barnes or Rapid?

A No.

Q Do you have any knowledge of approximately the aggregate or exactly the aggregate number of miles traveled in Pennsylvania by Old Dominion, Barnes and Rapid's vehicles in 1981?

A 2,216,000.

* * * *

[CROSS EXAMINATION]

[20] Q And, you don't have any problem do you because of the markers that require you to revise your routings around Pennsylvania or such things?

A We didn't in 1981.

* * * *

[23] REDIRECT EXAMINATION

BY MR. NAPOLITANO:

Q Mr. Anglin, why don't you purchase decals when—why don't you purchase decals when you need them and as you need them? Why do you purchase them in advance as you just testified?

A The expense to purchase the decal when you need it—would be on the road would be approximately 100% higher. A decal that costs $25 to purchase that decal when you start into Pennsylvania through an agency or some type of a system, that way would cost approximately $50.

Q Why is that? What's the mechanism that costs the extra money?

A The communication and the forwarding the money and the billing and the so forth to someone that would sell that decal, someone that does that type of business.

Q And, does that slow you down at all?

A Yes.

[24] MR. NAPOLITANO: No further questions.

MR. HOFFMAN: Just a few more, I'm sorry, in response to those.

RECROSS EXAMINATION

BY MR. HOFFMAN:

Q Just to amplify that, there are companies whose business is to sell marker decals or to arrange for you to get marker decals?

A Yes.

Q And, you can get those, and they charge a fee for doing that?

A Yes.

Q And, the alternative to that is you get them from the Revenue Department directly?

A Yes.

Q And, there is also such a thing known as a trip permit, right?

A Yes.

Q And, that rather than a marker which allows you to operate in the state for the course of the year, that is limited to a shorter time period?

A Yes.

Q And, that's available also, is it not, from the Revenue Department or from a permit business?

A Yes.

[25] Q And, if you get it from a permit business you pay a surcharge?

A Yes.

MR. HOFFMAN: That's all, thank you.

[TESTIMONY OF VERA GARNER]

MR. NAPOLITANO: I'd like to call Ms. Vera Garner.

VERA GARNER: Being duly sworn according to law, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. NAPOLITANO:

Q Would you state your name for the record, please.
A I'm Vera Garner.
Q And, what is your address, Ms. Garner?
A 9305 Holdsberry Road, Pensacola, Florida.
Q And, are you employed, Ms. Garner?
A Yes, sir.
Q By whom?
A Leonard Brothers Trucking Company, Incorporated.
Q And, where is Leonard Brothers headquartered?
A The corporate office is Miami, Florida.
Q And, your office is in Pensacola?
A Pensacola.
Q What is your position?
A Legalization Supervisor.
Q What are your duties as Legalization Supervisor?
A To secure and permit all trucks in the state that [26] we have authority in and haul freight.
Q How long have you been in that position at Leonard Brothers?
A Since 1976.
Q And, how long have you been with Leonard Brothers?
A Since 1967, March.
Q Are you knowledgeable as to qualification procedures and practices of Leonard?
A Yes, sir, in relation to my job, yes.
Q And, your job is to qualify—
A The trucks.

Q Are you also knowledgeable as to the type of service provided by Leonard Brothers?

A Yes, sir.

Q And, what would that be?

A Interstate movement, long haul, heavy haulers.

Q And, what do you mean by heavy haulers?

A That means that they haul any freight that is controlled by size and weight. They have a minimum between 751,000 pounds. Everything must be loaded by forklift or by a crane.

Q How does this tend to operate? How do—what are your pick up and deliveries? How does that work?

A Point to point, wherever the customer happens to be, sir.

[27] Q So, you go to a place and pick up and deliver to another point?

A That is correct. We don't have a set pattern, no direct runs and this type of thing.

Q What part of the country do you primarily operate in?

A Pretty much in the 48.

* * * *

[28] Q Do you have any knowledge of the number of vehicles operated in 1982 by Leonard Brothers?

A Yes, sir, we had 225 over the road units.

Q Approximately how many at that time did Leonard Brothers operate as owners?

A The same, 80.

Q About 80. Ms. Garner, you said you are in charge of purchasing the decals, did you?

A That is correct.

[29] Q Did Leonard Brothers purchase decals for all of the trucks which it operated, all the motor carrier vehicles, which it operated over the road in 1981 and '82?

A Yes, sir, we did.

Q Do you know the approximate number of decals purchased in each of those years?

A In 1981, 225; in 1982, 275.

Q You testified that in 1981, 225 marker decals were purchased and in 1982, 275. In each case that exceeds the number of trucks that you were operating in that year. Why is that?

A To allow for vehicles coming on and additional turn over. We are also constantly leasing new equipment.

Q So that, once again, when a truck—explain what you mean a little bit clearer?

A When we put a truck on we issue a decal to that truck for the states that they are going to travel, okay, or order for that truck. When that truck leaves, if it is there three months, those decals have to be removed and defaced, and additional decals have to go on. And, so the balance of the decals, the additional order is as a stock item that we have the convenience which the state allows us to do, to legalize that truck, say in Pennsylvania for example, without having to wait for the mail to come. It is a stock item, more or less.

Q In order to do that you purchase a larger number than you know you will need in advance?

[30] A We kind of anticipate what we feel we will need, and at the end of the year so far carrying over, you know.

Q I guess what I meant was you purchase more than the number of trucks you currently have?

A That's correct.

Q During the years 1981 and '82, do you know what percentage of the over the road fleet Leonard Brothers qualified in all 48 states?

A Their over the roads 100%.

Q Why does Leonard Brothers qualify all of its vehicles?

A We have to have the trucks ready to go with the freight, you know, where it takes it to. We have no way of knowing where the freight is going to go until a customer calls. So, we have to have the trucks legalized and ready to go.

Q Ms. Garner, does Leonard Brothers keep a record of truck mileage in each state on a truck by truck basis?

A Yes, sir, we do.

Q Do you happen to know how many of the 225 decals, and therefore trucks, that you purchased in 1981 traveled in Pennsylvania in that year?

A Yes, sir, 199. When the quarter ended in December 1981, 199 over the road units had actually traveled, had miles in that state.

Q Out of the 225 decals that were eventually put on trucks?

[31] A That's ending December 1981, yes, sir.

Q How about in 1982. Do you have any idea of how many of the 275 decals that you purchased were put on trucks that eventually travelled in Pennsylvania?

A Yes, sir, 225.

Q Shifting for a moment to aggregate miles, do you have any knowledge as to the aggregate number of miles for all of your trucks that were operated in Pennsylvania in 1981?

A Just in Pennsylvania, yes, in 1981, 166,280 miles.

Q And, do you know how many miles Leonard Brothers operated everywhere?

A Yes, sir, 12,681,890 miles.

Q How about 1982, do you have any knowledge of that?

A Yes, sir, in the state of Pennsylvania 154,573 miles, and everywhere, 16,521,698 miles.

* * * *

[33] BY MR. NAPOLITANO:

Q Ms. Garner, do you happen to have the cost of the marker decals purchased by Leonard Brothers in 1981?

A The total costs?

Q The total costs.

A $5,625.00.

Q. So, the cost of the decals was $5,625.00, and if our addition is correct your total fuel tax liability was $6,585.00 for 1981?

A That's correct.

Q Ms. Garner, why don't you purchase marker decal fees as you need them?

A Well because when we put a truck on, which we do, weekly we are adding to the fleet, and the state gives us the option, it's just far more convenient to have them available to put on that truck and sign the decal. It saves the temporary permit and the cost which exceeds the costs of the decal.

Q Would you be able to provide the same sort of service timewise to your customers if you didn't stockpile these decals?

A No, sir.

Q Why is that?

A Because a temporary permit is only good for the [34] five day traveling time which many times will not allow a truck the travel time. And, a temporary permit, like I say, exceeds the cost of the original decal. And, so we feel that's—and in the course of a calendar year going from April to April we really have no decals left over because our mileage is based on January to December; but, our decals are purchased and anticipated from April to April. So, whereby our mileage runs out December '81, the decals carry over January, February and March, and the first part of April. We are putting on new trucks which will have to have the 1981 decal, and then April 1st we have to secure for them a 1982 decal, and that usually depletes our stock.

Q So, what you are saying just practically it doesn't work out for you the other way?

A That's right.

* * * *

[TESTIMONY OF DOUGLAS HUGHES]

[42] DOUGLAS HUGHES: Being duly sworn according to law, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LITTLETON:

Q Mr. Hughes, could you give us your name, please.

A Douglas A. Hughes.

Q And, by whom are you employed?

A The American Trucking Association.

Q And, in what capacity are you employed by that association?

A I am Director of its Department of State Laws.

Q And, could you tell His Honor what the American Trucking Association is, very briefly?

A ATA is a national federation of the trucking industry, having an affiliated association in each of the 50 states, and the District of Columbia, and also having affiliation with the 13 national conferences.

* * * *

[44] Q And, in the past three years what have you been primarily doing?

A In the past three years we devoted a great deal of our attention to litigating various issues that have come up in the states not unlike the litigations before us here this afternoon. We have been involved in these kinds of fee cases in Connecticut, Kentucky, Maryland, here and Vermont, and with other issues affecting interstate truck operations in Mississippi, New York and Arkansas.

Q Now, in connection with this case, at our request and the request of the ATA, did you undertake to con-

duct a survey of Pennsylvania and non-Pennsylvania regtered vehicles?

A Yes, sir, we did.

Q Could you describe how you went about that survey, and what information you gathered?

A The first thing that we had to do was identify those motor carriers who have obligations under this requirement, and in doing so we sought some rather specific [45] information under discovery from the Commonwealth of Pennsylvania.

Q Let me show you what will be marked exhibit P 2.

(Whereupon, petitioners' exhibit 2, a letter dated March 16, 1982, was presented and marked for identification.)

BY MR. LITTLETON:

Q Would you explain to His Honor what P 2 is? How you came to get it?

A We had asked the Commonwealth for a list of all of the motor carriers who are subject to the marker fee requirements, and also a list of all registrants of Pennsylvania motor carrier vehicles. And, we had asked some additional information of the Commonwealth which is responded to in this letter from Andrew Gordon which arrived in my office in mid-March 1982 along with two reels of computer tape which were the lists of these various carriers.

Q What did you do with those lists? What did you do with the tapes, really?

A Well, the tapes were put on the computer and a list was generated, survey forms were sent out to all of those carriers soliciting specific information with respect to the issues before the Court today.

(Whereupon, petitioners' exhibits 3, and 4, a memorandum dated March 24, 1982, and a memorandum dated March 24, 1982, were presented and marked for identification.)

[46] BY MR. LITTLETON:

Q Looking at exhibits P 3 and P 4, would you tell His Honor what they are?

A Yes. P 3 is the survey form which we sent to that list of carriers who had purchased fuel tax markers in 1981 up until early March 1982. They were located as might be expected at points outside of Pennsylvania. The list also indicated not only the names and addresses of these carriers, and in this group there were over 31,000 such carriers, but it also indicated the number of markers which had been purchased by those carriers.

Q And, who designed the questionnaire that is attached to each one of the letters going to them?

A I did.

Q What was the purpose of this survey, briefly stated?

A The basic purpose of the survey was to identify how this fee impacts on the individual motor carrier who uses Pennsylvania highways. On the one hand carrier vehicles which are registered in jurisdictions other than the Commonwealth and, secondly, how the fee, if in fact it is paid by carriers based in Pennsylvania, how that deemed cost affects them.

Q And, how many people or trucking companies did you send P 3 to?

A P 3 was sent to 31,358. P 4 went to the registrants of motor carrier vehicles in Pennsylvania, and that list [47] included 21,806 carriers. There was a total mailing of over 53,000.

Q Had you done similar surveys like this before?

A Oh, yes. We had done some earlier in Vermont and we had done one in Maine, and we have done some since this was conducted.

Q And, these were for cases involving Maine and Vermont—

A Very similar to the issues presented here, yes.

Q And, how many receipts did you get, take P 3 first.

A P 3 is the foreign based purchasers of decals. That went to 31,000. We had a response of 6,428, 59 of which were not useable and the rest are contained in exhibits which will be presented to the Court later.

Q What generally made the 59 unuseable?

A Oh, there were a number of causes. Some of them came in late. We had closed out the survey. Some of them were no longer in business or operating vehicles anywhere. Some were incomplete and we could not get in touch with them to gain a better insight. And, there were other reasons.

Q That about what; 20% return on those?

A Approximately about 20% yes.

Q And, the Pennsylvania based survey how many responses did you get on that?

A P 4 there were 6,423 responses. I'm sorry, for the [48] Pennsylvania based there were 1,690 responses, 151 of which were not useable. And, there was another group that was not useable solely because they operated totally intrastate.

Q Within Pennsylvania?

A Yes.

Q How many did you actually use, 1,539?

A No. In the final exhibit we included 953, but that —the carriers in the survey exhibit which will be presented shortly, operated interstate.

Q After you got all of these, or as you got all of these answers coming in, what did you do with them and how did your people handle them, and how did you insure their integrity?

A The first step was a clerical step. A computer code number was indicated on the corner for entry purposes into the computer. If they were foreign based carriers we also indicated the number of decals which the Commonwealth records reflected the carrier had purchased. I examined each one and segregated them. I either authorized them for entry into the computer or I set them aside for further inquiry by way of telephone interview

because I had questions, I had doubts as to the same aspect of the information which was recorded on the sheet. And, the third group, of course, were those which, perhaps after telephone inquiry we had decided not to use for one or several reasons.

MR. HOFFMAN: I can't hear.

[49] BY MR. LITTLETON:

Q Keep it strong.

A Yes.

Q And, after you—did you make telephone inquiries?

A Yes. We made about 1600 telephone interviews to gain insight into the information that was supplied to us just by the survey form, and so that I could gain confidence in understanding and be assured that what I was putting in the survey reports, in fact, reflected the operation.

Q Now, eventually those with which you were satisfied ultimately got into the computer?

A Yes, they did. In several cases directly after they had been received, and in some cases not until after they had been reviewd.

Q And your computer coughed up quite a lot of statistics and information?

A Yes.

Q I show you what will be marked exhibit P 5.

(Whereupon, petitioners' exhibit 5, survey of Pennsylvania Foreign-Based Vehicle Registrants Highway Use Operating Characteristics 1981, was presented and marked for identification.)

BY MR. LITTLETON:

Q And, would you explain to His Honor what P 5 is?

A P 5 is a summary report embracing some 5,901 carriers who operate vehicles in Pennsylvania which are base [50] registered in states other than Pennsylvania.

As you can see from the summary page in 1981 they had purchased—

MR. HOFFMAN: Excuse me, your Honor. At this stage, just as Mr. Hughes begins to get into the substance of his questionnaire and its results I think we have two serious objections that go to this survey report and all the other survey reports that will follow, and if I may—

THE COURT: Do you want to make an objection?

MR. HOFFMAN: Yes, I do. I think it is the right juncture. I waited while he described the process and when he got to the substance I think this is the time, Judge, if I may. We have two problems for two separate reasons. I think as Mr. Hughes has described what you have is a compilation of information that was returned to them on data sheets, supplemented by telephone conversations. Now, in both instances you have different forms of hearsay, but in both instances that's hearsay. That's out of court assertions that are being accumulated, put on to a computer printout, and accumulated into conclusions that are set forth on the front page of that exhibit. Now, the question that becomes is there some exception to the hearsay rule that allows that type of survey material to be admitted into evidence. Interestingly we weren't able to find any Pennsylvania case law that really describes the matter at all, and the best thing we found is a Third Circuit case from 1978. And, I wonder whether I could hand that up to the Court. It is [51] the Pittsburgh Press Club versus the United States. I give a copy to Mr. Littleton. That's at 579 F. 2d 751, your Honor. Now, what that case says in dealing with the issue of the federal rules, I think the relevant sections, your Honor, are about 757 and on, but what the court concluded there was that a report like a survey is admissible in federal court under what they call the catch-all exception to the hearsay rule. That is rule 803 of the federal rules, and I am referring to page 758, if it is done in accordance with professional standards.

Now, there will be some testimony later that that may not be the case here, that it wasn't done in accordance with those standards. But, the point for today is that to my knowledge the catch-all exception in the federal courts, which is to say, does it look reliable and is it important, and it doesn't fit under any other exception maybe we can let it in, isn't part of Pennsylvania law. So, I have a lot of trouble understanding how the survey results are admissible in court. So, we have that problem, Judge. Secondly, I know I referred in my opening statement to the fact that the theory on which this survey is predicated which is that the cost per mile of Pennsylvania based carriers is less than the cost per mile of out of state registrants, that is to say a differential impact was expressly rejected by the United States Supreme Court in three cases that are cited on page 11 of our brief, and I'm not going to read extensively. Let me just give you a sentence, [52] if I may, Judge. And, we have excerpted some of the quotations. These are all either recent cases or cases that have been reaffirmed over the years. And, they say, for example, in what is called the Aero-Mayflower cases, that the flat fee which was at issue in that case: "Is for the privilege for a use as extensive as the carrier wills that it shall be. There is nothing unreasonable or oppressive and a burden so imposed, one who receives a privilege without limit is not wronged by his own refusal to enjoy as freely as he may." And, in that case and in two other cases that we have cited, the Supreme Court has said that the fact that there is a flat fee; in this instance, $25, that some people may drive more miles in Pennsylvania and, therefore have a higher or a lower cost per mile, as the case may be, simply does not wash under the Complete Auto test. So, for both the reason that in our view it is simply irrelevant, and for the second reason that I think it is hearsay and I don't see an exception to permit it in, we would think that this area of the case is not one that is properly before the Court, your Honor.

THE COURT: Well, the Mayflower case was a question that it was assessed against all carriers. I think that's in dispute here.

MR. HOFFMAN: I agree, your Honor, that is in dispute here; but, that's the first prong of Mr. Littleton's argument. This survey goes to the second prong.

[53] THE COURT: Mr. Littleton is going to bear the burden of establishing that this is trustworthy enough for the Court to rely upon. It is certainly relevant and material, and certainly has a lot of probative value. But, in any event, we are going to overrule your objection at this time; however, if at the conclusion of Mr. Littleton's case you feel that he has not met his burden you certainly can make a motion to strike that testimony from the record.

MR. HOFFMAN: What I prefer to do, if I may, your Honor, I will need testimony from our witness as to why it does not meet professional standards and is not reliable. So, if I may, I would make a motion after we have presented our testimony to strike it or delete it from the record.

THE COURT: Very well.

MR. HOFFMAN: Thank you.

MR. LITTLETON: Thank you, your Honor.

BY MR. LITTLETON:

Q Going back to exhibit 5, and the survey, the summary sheet, could you explain to His Honor the important items on that summary sheet?

A The summary is a compilation of a sum, if you will, of the carriers in the survey. They had purchased a little over 169,000 markers in 1981.

Q Let me stop you right there. That information as to how many markers came to you from the tapes that the [54] Pennsylvania DOT forwarded to you?

A That information was on the tapes, and in some cases was incorrect as reflected by the carriers numbers,

and was confirmed with the carriers in telephone interviews and the corrected information is reflected here.

Q Would you say a great majority of that information is from the tapes itself?

A Well, the vast majority is, yes.

Q So, that's the information that the DOT gave you?

A Yes.

Q Go ahead.

A These carriers had purchased about 5,500 trip permits, a five day permit which were discussed earlier. They had traveled everywhere about 12½ billion miles in 1981, 766,000,000 of those miles were in Pennsylvania. And, they expressed—experienced marker costs of a shade over $4,000,000 and trip permit costs $27,500. And, their cost when spread over their Pennsylvania miles comes out to a little over ½ cent a mile, [0.56] of a cent per mile. The purpose of putting together P 5 was not necessarily to come to these aggregate numbers and averages, but to determine, as I said at the outset, what the impact is on individual carriers using the highways of Pennsylvania. And, I think to see the value of this exhibit you have to look at the carriers inside.

THE COURT: Is that the purpose of the exhibit?

[55] MR. LITTLETON: That's one of the purposes, not the sole purpose.

THE COURT: Very well.

BY MR. LITTLETON:

Q Looking at the—still the summary at the bottom where you have average costs .0056 per mile. That's the cost per mile that the survey shows of the 5,091 carriers?

A Yes, their vehicles and it is an average costs. There are many—some carriers below it and there are some carriers above it.

• • • •

[58] BY MR. LITTLETON:

Q Now, would you go to some of the—would you explain to His Honor, say take page 1, and explain what the interior documentation is.

A If we can look at page 1 in the survey it reports the total miles and the Pennsylvania miles as was reported by the carrier. And, perhaps, by way of example we can look [at] the fourth group from the top on page 1, A. Arnold and Sons which is a household goods carrier out of Louisville, Kentucky. Their total miles and their Pennsylvania miles are recorded. Further across the page the number of markers which they purchased, 27, is recorded. The two intervening columns are computer calculations of the percentage of their Pennsylvania miles to their miles everywhere. And, then the computer calculation of the average miles per truck in Pennsylvania, which does not necessarily reflect any one of their vehicles. It is an average for the 27. Their cost of decals is calculated by multiplying the 27 decals times $25, $675; and, then their cost per mile. In this case about 2½ cents a mile, is the $675 divided by the 26,764 miles in Pennsylvania, a cost factor, frankly, not uncommon among the 40 or 50 or 60 household goods carriers that are in this survey report.

Q The factors you need to come to the 2½ cents per mile cost are the Pennsylvania miles and the number of [59] markers that were purchased?

A That is correct.

Q And, you got the information about the number of markers in the most part from PennDOT?

A Yes.

Q And, is there a mechanism within the trucking industry where Pennsylvania does, in fact, have the Pennsylvania miles of A. Arnold and Sons somewhere recorded?

A All these mileage numbers for the carriers are provided on a quarterly basis to the Department of

Revenue in meeting the carrier's obligation under the road tax.

Q So if there was any question of how many miles A. Arnold ran in Pennsylvania, Pennsylvania could go and look at the filings made to pay the fuel tax, is that correct?

A Yes, they have all of these mileage numbers and, in fact, they have it for the entire population.

* * * *

[63] BY MR. LITTLETON:

Q I show you what is marked as P 7. Would you tell the Court what that represents?

A This is not unlike structurally the information presented in P 5, but the carriers listed in P 7 are all Pennsylvania based interstate carriers. These are the carriers who operate vehicles with Pennsylvania registration, and are deemed to have paid this marker fee evidentally as a part of their vehicle registration fee.

Q And, your calculation of the cost per mile for [64] these people are based on the fact that you assume that they did, in fact, pay $25?

A Assuming the $25 as a cost element, yes, that is the premise in this exhibit.

* * * *

Q Now, while we are on it, does the Pennsylvania miles shown for all of the carriers listed on P 7, is that filed with the Commonwealth by the carrier and separately and independently of this survey?

A I believe so.

Q And, it's filed, presumably, for the purpose of [65] figuring out what their fuel tax will be?

A Yes. There is an additional filing for carriers which are now apportioned, and that would be with the Department of Transportation for apportioned registration purposes.

Q Now, are there high and low costs per mile in this?

A As we found in P 5 it is the same kind of experience here. If we can look for a moment on page 16, we can find a low cost carrier in the top group, the fourth carrier from the top, in fact, Philadelphia Newspaper which are the publishers of the Philadelphia Inquirer, 91% of their miles are in Pennsylvania, and they have good equipment utilization. And, they have a low cost of [0.02] of a cent. But, again there are other kinds of carriers who for one reason or another do not have such high utilization. If we look on the second page of the exhibit in the second group from the bottom, Bearing Products Company, we find that they have a cost, and this is the highest cost carrier I believe in the survey, of some [25] cents per mile. Bearing Products uses their single vehicle in Philadelphia less than 10 days a year. There are some carriers who are not only represented in P 7, but who also appear in P 5, and this is because there are carriers who have some vehicles registered in Pennsylvania and some vehicles registered beyond Pennsylvania. In P 7, for example, if we look on page 20 we will find United Parcel Service listed, the tenth carrier from the top, and [66] their costs for these 480 Pennsylvania registered vehicles, assuming there is in fact any cost at all, calculates to be [0.06] of a cent, lower than the average. But, if you look at the company's vehicles registered beyond Pennsylvania, referring back to P 5, on page 122, it is the 15th carrier from the top, the end of that third group. There are 886 vehicles registered beyond Pennsylvania. They have a cost of [0.30] of a cent per mile. There are, in fact, some 95 such carriers which are in both exhibits because of the way they base and operate their interstate vehicles.

Q Now, were some of the responses—strike that. Go back to the summary page of P 7 if you will.

A Yes, sir.

Q Assuming and would you explain to His Honor what the results of the summary are and what they show as to the cost per mile?

A The 953 carriers operate 14,253 motor carrier vehicles registered in Pennsylvania. Their Pennsylvania mileage is 326,798,025 miles, and assuming that they have a marker cost at all at $25 per vehicle that cost would be $356,326. And, on a per mile cost basis that comes to [0.11] of a cent, one-fifth of the cost experience of the vehicles registered beyond Pennsylvania.

Q Which are in P 5?

A Yes.

[67] Q Were there some answers where you found completely totally intrastate vehicles?

A Yes. We received responses from some 586 purely intrastate carriers in Pennsylvania. They had registered some 2,644 Pennsylvania trucks, and operated those vehicles all in Pennsylvania, 56,592,193 miles. Interestingly, assuming they have a marker fee cost, that cost would be $66,100 which calculates out to [0.12] of a cent, just about the same as the [0.11] for the Pennsylvania based interstate operators.

Q Now, based on these surveys, particularly P 5 and P 7, it would appear that the average for Pennsylvania based is .0011 and the average for foreign based is .0056 per mile. Can you convert that for illustrative purposes what that would mean say if it were a fuel tax? How many cents per gallon would that relate to?

A Yes, but it will vary from vehicle to vehicle, depending upon the weight of the vehicle and its fuel consumption. If we think in terms of a smaller motor carrier vehicle, one perhaps at 20,000 pounds gross vehicle weight, it experiences fuel consumption of about 6.6 miles per gallon. And, if that average motor carrier vehicle of 20,000 pounds is based beyond Pennsylvania the [0.56] of a cent translates into a comparable 3.7 per gallon fuel tax. That's the same cost impact for the Pennsylvania based operator of a similar vehicle it is only seven-tenths of a cent per gallon. If you go to a [68] heavier vehicle, one at 80,000 pounds, you find a fuel consumption rate of 4.9 miles per gallon. And, here the cost impact

for the foreign based operator the equivalent of the [0.56] of a cent is the same impact that he would experience with an additional fuel tax of 2.7 cents per gallon. Whereas, the Pennsylvania based operator, assuming he has any cost at all, the [0.11] translates into a half of a cent per gallon.

* * * *

[76] BY MR. LITTLETON:

Q And, P 11 which is the chart. And, I direct your attention to P 10. Would you explain to His Honor what that represents?

A Yes. We attempted to group the carriers reflected in P 5, the foreign based carriers, and those listed in P 7, the Pennsylvania based carriers, into various cost per mile groups, going from under [0.1] of a cent per mile up to [3.0] cents per mile. And, the Pennsylvania based carriers are listed in and profiled on the left side of that page, and the foreign based on the other side. And, here you can begin to see the impact of this fee as it affects various, different types of carriers. Over half of the Pennsylvania based carriers are under two-tenths of a cent per mile as you can see at the bottom of the page, and yet almost 30% of the foreign based carriers are over 3 cents a mile. In fact, within that group of over 3 cents a mile there are 136 listed in P 5 who are over 50 cents a mile. The exhibit 10—excuse me, exhibit 11, is a computer generated graph of the numbers contained in exhibit 10. The columns which have the "hash-marks" in it represent the profile for the Pennsylvania based vehicles. And, as we saw in the data on #10, graphically #11 shows for the Pennsylvania based carriers a very low cost per mile for a vast majority of the carriers; whereas, for the foreign based carriers their cost is considerably higher by way of [77] profile with that large percentage, the 29.7%, experiencing a cost of over 3 cents a mile.

Q And, the Pennsylvania costs indicated in these two exhibits is only a deemed cost?

A If there be a cost at all.

Q If there is a cost at all?

A Yes, sir.

Q Now, you heard Mr. Phillips testify this morning is that correct?

A This afternoon.

Q This afternoon.

A Yes.

Q And, you heard him indicate the number of Pennsylvania miles run by the various categories of trucks, and the number of out of state miles, is that correct?

A Yes.

Q Would you look at P 1, which is his handwritten—

A Yes, I have P 1.

Q Would you look also at P 2, please.

A The letter addressed to Mr. Snyder from Andrew Gordon, yes.

Q Now, in P 2 does Mr. Gordon tell you how many decals were sold to out of state tractors?

A Yes. In his paragraph 3 there is an indication that for the year beginning April 1, 1981, the 1981 decal year, in [78] the aggregate the Commonwealth sold 399,240 decals for display on foreign vehicles. And, in paragraph 2, Mr. Gordon advises us that there were at that time 130,910 vehicles in excess of 17,000 pounds registered in the Commonwealth.

Q And, at a $25 deemed cost have you multiplied out how much is deemed to have been received from the 130,910 Pennsylvania based carriers?

A Yes, I have.

Q Would you read that into the record?

A It is $3,272,750 in deemed cost.

Q And, did you multiply the number of out of—foreign based decals that were sold by $25?

A The 399,240 decals sold for display on vehicles registered beyond Pennsylvania at an actual cash expense for the industry of $9,981,000.

Q Now, in preparation for Mr. Phillips' testimony did you prepare a potential exhibit which I will now ask be marked P 12.

A Yes, I did.

(Whereupon, petitioners' exhibit 12, All Pennsylvania Based Motor Carrier Vehicles, and All Foreign Based Motor Carrier Vehicles, was presented and marked for identification.)

BY MR. LITTLETON:

Q And, those figures recited are indicated there in type, is that correct?

[79] A Yes, sir. They are typed calculations from Mr. Gordon's correspondence, P 2.

Q Now, during the testimony of the prior witnesses, but after Mr. Phillips, did you have an opportunity to add up from P 1 the number of miles run by Pennsylvania registered vehicles of two axles and six tires, and heavier?

A Yes, sir, I did.

Q And, what was your total mileage?

A The total mileage for those five categories from P 1, is 3,385,000,000 miles.

Q And, on our exhibit which we are slowly but surely putting together, that entry should go right after total Pennsylvania miles in the first—

A In the group at the top, yes.

Q And, during the period of time while this case has been tried did you make the necessary division?

A Yes, sir, I did.

Q And, what was the total cost per mile from Mr. Phillips' figures and Mr. Gordon's numbers?

A The cost per mile based on that very different approach is [0.10] of a cent.

Q And, what was your survey?

A [0.11] of a cent.

Q Now, did you do the same calculation for out of state mileage from Mr. Phillips' P 1 as to how many miles the [80] involved vehicles over 17,000 pounds ran?

A Yes. Again, it's adding the comparable five figures from P 1, and that number which should be placed next to total Pennsylvania miles in the foreign carrier group. is 1,811,000,000 miles.

Q And, did you perform the necessary division?

A Yes, sir, I did.

Q And, what did it come out to as the cost per mile for foreign based motor vehicles?

A [0.55] of a cent.

Q Compared to?

A [0.56] of a cent.

Q Which was the survey?

A Yes.

Q In your experience in the industry would you anticipate that the traffic mileage pattern testified to by Mr. Phillips as of 1979, which was the last data available to him and upon which Pennsylvania DOT plans its activity, would be any different in 1981, or meaningfully different in 1981?

A Trucking operations are a reflection of the national economy, and there has been no material difference in the 1979 vis-a-vis 1981 economy. I would not expect a material difference.

* * * *

[CROSS EXAMINATION]

[83] Q And, you do not consider yourself, do you, sir, expert in either the area of statistic or survey research?

A That is correct, although experienced.

* * * *

[REDIRECT EXAMINATION]

[127] Q Now, overnight, Mr. Hughes, we sat down and prepared another exhibit. Let me ask that that potential exhibit be marked P 13.

(Whereupon, petitioners' exhibit 13, Foreign based carriers which purchased 1000 or more marker decals, was presented and marked for identification.)

BY MR. LITTLETON:

Q And, could you explain to the Court what that exhibit is, and the manner in which it is set up?

A Yes. This is a listing of the larger carriers in P 5 measured in terms of the numbers of decals which they purchased, and, in fact, the threshhold used is 1,000 decals. All carriers listed in P 5 which paid taxes for 1,000 or more decals are in this list here.

[128] Q And, did you check the Pennsylvania DOT tapes to determine how many of the Pennsylvania listing had purchased more than 1,000?

A There were 40 carriers who purchased 1,000 or more decals from Pennsylvania in this year.

Q According to the Pennsylvania computer tapes?

A Yes.

Q How many of those 40 responded and are on this list?

A Twenty-one.

Q And, what's the total Pennsylvania miles of the 21 carriers who responded?

A 203,796,806 miles, as shown in the second column of this exhibit.

Q And the total costs of those permits and markers?

A $1,174,335 as shown in the third column of the exhibit.

Q And, if you were to find an average cost per mile of those two items what would you get?

A [0.58] of a cent.

Q And, what percentage of the tal foreign based Pennsylvania miles which are on the front piece of P 5, do the 203,796,000 mile represent?

A 26.5%.

* * * *

[129] MR. LITTLETON: We have no further witnesses, your Honor. And, we would respectfully move the admission of the exhibits.

THE COURT: Any objections?

MR. HOFFMAN: Your Honor, our objections are limited to the surveys for the reasons we stated yesterday relating to relevancy and hearsay.

THE COURT: Objections overruled, and the exhibits will [130] be received in evidence and made part of the record.

* * * *

[TESTIMONY OF WALTER KILARESKI]

[CROSS EXAMINATION]

[167] Q You can't say that trucks registered in another state coming through Pennsylvania do more damage to the highways than a truck in Pennsylvania, registered in Pennsylvania?

A Are they the same axle load?

Q Same axle load.

A Then they would do the same damage.

Q One doesn't do any more than the other?

A No, sir.

Q And, if 60% of the travel by trucks was Pennsylvania trucks and 40% by out of state registered trucks, would you conclude that Pennsylvania has—trucks has contributed a little more to the damage than out of state trucks?

A I would even taken it further. If you had 99 Pennsylvania trucks and one out of state truck then most of the damage is done by the Pennsylvania trucks.

* * * *

[TESTIMONY OF BARRY FALKENSTINE]

[169] BARRY FALKENSTINE: Being duly sworn according to law was examined and testified as follows:

DIRECT EXAMINATION

BY MS. JOHNSTON:

Q Please state your name and business address for the record.

A Barry A. Falkenstine, Pennsylvania Department of Transportation, Transportation and Safety Building, Harrisburg, Pennsylvania.

Q Mr. Falkenstine, what is your position?

A My title is Pavement Management Engineer.

Q Are you a registered professional engineer?

A Yes.

Q What are your job duties?

A Primary duties are to keep the Department's pavement design procedures up to the current state of the art. I am involved with some standard drawing work for pavement construction, and also rehabilitation techniques, development of rehabilitation techniques.

Q Within PennDOT is there anyone who has more responsibility in these areas than you do?

[170] A Technically no.

Q And, what do you mean by that?

A From the technical aspects of the pavement design, no. Administratively yes.

Q How long have you been in your current position?

A Ten years.

Q What degrees do you have?

A Bachelor of Science of Civil Engineering.

Q Do you have any position within AASHTO?

A Yes.

Q What is that?

A I am a member of the Joint Task Force on Pavement Design.

Q Were you present during Doctor Kilareski's testimony?

A Yes.

Q Do you agree or disagree with his testimony on pavement deterioration?

A On pavement deterioration I agree.

Q To what extent is expected truck traffic taken into account when PennDOT designs pavement?

A To what extent it is taken into account? It is a major factor in determining a pavement thickness, the most major factor.

Q Is automobile traffic the expected volume of [171] automobile traffic taken into account when PennDOT designs pavement?

A No, not for the pavement.

Q Why?

A Because it has a very insignificant affect on the thickness of the pavement.

Q Does the PennDOT Design Manual utilize the AASHTO design procedure that Doctor Kilareski described?

A Yes.

Q To take an example, the nearby section of Interstate 83 that was recently reconstructed and expanded, are you familiar with that segment of roadway?

A Yes.

Q Was that segment designed on the assumption that heavy trucks would be using it?

A Yes.

Q If you were to have designed that roadway on the assumption that it would not be used by heavy trucks would the design have been any different?

A You are talking about the pavement design?

Q Yes, that's correct.

A Yes, it would have been different.

Q How would it have been different?

A The pavement could have been very substantially thinner than it was.

[172] Q Would there be any other differences?

A There possibly could be some geometric differences, yes.

Q Excuse me, go ahead.

A When I say geometric I'm talking things like the alignment or grades or widths of the lanes and total roadway.

Q Do you know what financial impact this different design would have?

A Are you taking just the pavement or all those other factors I just mentioned?

Q Let's take pavement.

A I have been away from the looking at prices lately so I could only make an estimate of what they—if you want an estimate.

MR. LITTLETON: Object for the record, your Honor.

THE COURT: You object to an estimate? Do you object to an estimate?

MR. LITTLETON: Yes, your Honor.

THE COURT: We sustain the objection.

BY MS. JOHNSTON:

Q If I might back up, Mr. Falkenstine, would you please describe in a little more detail the differences that would exist in the design for this roadway without trucks as compared to with trucks in the area of grades.

A I could only give a general statement that grades [173] could be steeper for automobiles, therefore, earth work could be different and a lot less expensive, movement of subgrade material.

Q How would the design of shoulders be different?

A They could be narrower, but I am not familiar with the exact AASHTO criteria on that.

Q How would lane design differ?

A They could be narrower.

Q If trucks were banned from today forward on this segment of Interstate 83, what effect would this have on the expected life of that roadway?

A Given the pavement—

MR. LITTLETON: I object to that. I don't think he is qualified as an expert in that way.

THE COURT: Well, I'm going to sustain the objection unless you want to establish a foundation.

MS. JOHNSTON: Your Honor, I will withdraw the question. No further questions.

* * * *

[CROSS EXAMINATION]

[177] Q Now, can you in any way differentiate between the damage done with a need for design for trucks between out of state registered trucks and in state registered trucks?

A With respect to pavement design a truck is a truck.

* * * *

[TESTIMONY OF EUGENE ERICKSEN]

[DIRECT EXAMINATION]

[186] Q Now, what I'd like to do now is ask you to exercise your professional judgment as to certain facets of that survey. Mr. Hughes has testified that he was the key person at American Trucking Association with respect to this litigation. That he was a non-expert in survey research and that he was the person who designed and implemented the survey. Is that consulation of facts in your judgment consistent with, or inconsistent with professional standards in the field of survey research?

A Well like any professional field we feel that experts are need to carry out proper activities.

Q And, is it consistent with professional standards that there be an interested or involved party doing the survey work?

A It is very difficult for an interested party to be objective when making judgments.

Q Now, in Mr. Hughes' deposition which is in evidence in this case he stated that there were no written

documents prepared in advance of the survey describing its methodology, [187] procedures that would be applied and the rules that would be used, and that's at pages 15, 16 and 75 and 76 of the deposition. Is that consistent or inconsistent with professional standards in the field of survey research?

A Inconsistent.

Q Why?

A Because you have either the same person carrying out activities over a long period of time, or different people carrying out the activities over a period of time, and if you don't have written procedures the rules are not likely to be applied systematically. So, that would mean that different kinds of information would be obtained from different respondents.

Q And, what is the danger in that?

A You have no basis for comparing them.

Q In his deposition Mr. Hughes stated and I'm going to try to quote this pretty accurately from page 76, that he felt there was no need to put those things in writing because he was supervising each and every survey. Do you agree with that?

A No. Every human being is subject to lapses of memory.

* * * *

[201] Q Maybe I can just ask you to summarize by telling us instead of what the American Trucking Association did in this survey, what it should have done.

A What it should have done would have been to select a sample of a reasonable number. It should have designed a questionnaire which would permit the identification of trucks with Pennsylvania license plates and out of state license plates. That would have permitted the identification of inter and intra-state trucks, and obtained the mileage for each truck which had a license plate or a decal. It should have taken a sample and it should have taken steps to make sure that the large majority of the sample actually participated in the survey. It should

have pre-tested the questionnaire. It should have validated a sub-sample of the respondents' answers.

Q Does the failure to have done these things in context of other testimony you have given raise concerns in your mind as to the validity of the information to the respondents to the survey as to the individuals who did not respond?

A Yes.

* * * *

[CROSS EXAMINATION]

[214] Q And, certainly you would agree that the survey is accurate as to the affect of the tax on the people who did, in fact, answer?

A No.

Q You wouldn't?

A Because of the problem that I indicated to you there are cases where people seemed to have confused Pennsylvania licensed trucks and foreign licensed trucks, interstate and [215] intrastate.

Q And, you don't accept Mr. Hughes' resolution of those problems?

A That's because in some of the data sheets there was no indication of phone calls.

* * * *

[DENIAL OF MOTION TO STRIKE ATA SURVEYS]

[218] MR. HOFFMAN: Now, If I can take 10 more seconds, I'd like to move now in light of Doctor Ericksen's testimony to strike the various surveys submitted by ATA as exhibits on grounds that they are not in accordance with professional standards.

THE COURT: The motion is denied.

* * * *

[PETITIONERS' EXHIBIT 1]

June 16, 1983

1979 Annual Vehicle Miles of Travel for Cargo Vehicles (Millions)

	PA. Basis VMT	Other Stat Basis VMT	TOTAL VMT
SINGLE UNITS			
2 Axle 4 tire (1)	6,252	1,396 - 18%	7,648
2 Axle 6 tire	992	248 - 20%	1,240
3 Axle Sing. Unit (2)	240	59 - 20%	299
SUBTOTAL	7,484	1,703 - 19%	9,187
COMBINATIONS			
3 Axle S.T.	54	17 - 24%	71
4 Axle ST.	451	213 - 32%	664
5 Axle ST. (3)	1,648	1,274 - 44%	2922
SUBTOTAL	2,153	1,504 - 41%	3,657
TOTAL	9,637	3,207 - 25%	12,844

(1) INCLUDES PANEL & PICKUP
(2) INCLUDES 4 Axle Single Units
(3) INCLUDES 6 Axle COMBINATIONS
SOURCE: PA TRAVEL ESTIMATE 1979 AND 1977 CENSUS OF TRANSPORTATION

JDP
Bureau for Strategic Planning

	VMT (09)	Census 77 Distribution	% travel in Pa.
2 Axle 4 tire (mc/pp)	7,645.0	.8325 *	85.368 **
2 Axle 6 tire	1,239.8	.1350	83.53%
3 Axle Single Unit +	258.7	.0325	83.83%
subtotal	9,183.5	1.0000	
3 Axle Semi trailer	40.3	.0195	73.83%
4 Axle Semi trailer	375.3	.1816	65.87%
5 Axle Semi trailer	1,651.1	.7989	54.65%
subtotal	2,066.7	1.0000	
total	11,250.2		

PA TRUCK TABLE = (Census 77)

	*	PA. Vol VMT (09)	**	1977 TOTAL PA	STATE out of State	TRUCK TOTAL
2 Axle 4T	8,796.0 (.8325)	7,322.7	(.9538)	6252.1	1396.4	7,648.5
2 Axle 6T	8,796.0 (.1350)	1,187.5	(.9353)	991.9	248.4	1,240.3
3 Axle SU	+ 8,796.0 (.0325)	285.8	(.9383)	239.6	59.0	298.6
		8,796.0		7,483.6	1,703.8	9,187.4
3 Axle ST.	3,773.5 (.045)	73.6	(.7383)	54.3	17.0	71.3
4 Axle ST.	3,773.5 (.1816)	685.3	(.6587)	451.4	212.7	664.1
5 Axle ST.	+ 3,773.5 (.7957)	3,014.6	(.5463)	1,647.5	1273.3	2921.3
		3,773.5		2,153.2	1,503.5	3656.7
				9,636.8	3,207.3	12,844

[PETITIONERS' EXHIBIT 1 (Continued)]

Department of Transportation
June 18, 1981

Estimated Travel in Pennsylvania
by Truck Type—1979

Mr. William J. Green, Director
Office of Press and
Legislative Affairs

Attn: Rick Atkinson

Raymond C. Seaman, Director
Bureau of Advance Planning

In response to your request for assistance on a review of HB1376, we have estimated truck travel by vehicle type. Sources for this estimate were the Pennsylvania 1979 travel statistics maintained by this Bureau and the 1977 Census of Transportation for Pennsylvania (U.S. Department of Commerce).

1979 Annual Vehicle Miles of Travel (millions)

Single Units	Pa. Regis. Vehicles	Other State Regis. Vehicles	Total
2 axle (1)	7,249	1,640	8,889
3 axle (2)	243	55	298
Total	7,492	1,695	9,187
Combinations			
3 axle	43	28	71
4 axle	402	262	664
5 axle (3)	1,770	1,152	2,922
Total	2,215	1,442	3,657
TOTAL	9,707	3,137	12,844

(1) Includes panel and pickup trucks
(2) Includes 4 axle single unit trucks
(3) Includes 6 axle combinations

Using the rates as outlined in the proposed bill, we estimated that approximately $70 million dollars of revenue would be produced annually.

510:DJT:mh

cc: Mr. Douglas Tobin, Director, Bureau of Motor Vehicles

Ms. Mary Kotz, Fiscal and Systems Management

Mr. Richard Johnston, Revenue, OPEP, Strawberry Square

[PETITIONERS' EXHIBIT 2]

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

LEROY S. ZIMMERMAN
ATTORNEY GENERAL

March 16, 1982

Reply To:

1641 Strawberry Square
Harrisburg, PA 17120
(717) 783-1471

Thomas A. Schneider, Esquire
Morgan, Lewis & Bockius
2100 The Fidelity Building
123 South Broad Street
Philadelphia, PA 19108

Re: American Trucking Associations, Inc., et al. v. Robert K. Bloom, et al.—No. 315 C.D. 1982

Dear Tom:

In response to the information requested by plaintiffs in the Notice of Deposition dated February 23, 1982, the defendants offer information as follows:

1. Two reels of computer tapes plus an instruction sheet. Your clients should be able to derive from these tapes the information requested in Paragraphs (a) and (b) of the notice of deposition;

2. In response to request (c), 130,910 vehicles in excess of 17,000 pounds are registered in Pennsylvania;

3. In response to request (d), the number of identification markers sold for the year beginning April 1, 1981 is 399,240; and,

4. In response to request (e), Pennsylvania has entered into apportioned registration agreements with Alabama, Alberta, Arizona, Arkansas, Colorado, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Minnesota, Mississippi, Missouri, Montana, North Dakota, South Dakota, Tennessee, Texas, Utah, Virginia, Wisconsin, and Wyoming.

I trust that the foregoing information will be sufficient for your purposes. Please let me know if there are any problems.

Very truly yours,

/s/ Andrew S. Gordon
ANDREW S. GORDON
Deputy Attorney General

ASG/jac
Enclosures

[PETITIONERS' EXHIBIT 3]

AMERICAN
TRUCKING
ASSOCIATIONS, INC.
1616 P Street, N.W., Washington, D.C. 20036

INDUSTRY RELATIONS DIVISION
J. R. Halladay
Managing Director

DEPARTMENT OF STATE LAWS,
TAXATION AND RECIPROCITY
Douglas A. Hughes,
Director
(202) 797-5402

March 24, 1982

MEMORANDUM

TO: Pennsylvania Fuel Users

FROM: Douglas A. Hughes

SUBJECT: *Pennsylvania Marker Fee Legality*

As you probably know, the American Trucking Associations, Inc., has sued the Commonwealth of Pennsylvania challenging the constitutionality of its "$25 identification marker fee" taxing scheme. As with our earlier litigation in New England, we hope to show the court that this taxing scheme falls so much more heavily on interstate trucks based in states other than Pennsylvania than on Pennsylvania-based trucks that it fails to meet the constitutionality criteria established by the U.S. Supreme Court. You'll be interested to know that a few weeks ago the Commonwealth agreed with stipulations filed with the Court to provide refunds of 1982 identification marker fees if ATA proved its case in this litigation.

In our pursuit of this litigation, we urgently need your help in developing necessary data to demonstrate the unconstitutionality in this taxing scheme to the Court. The proof of our case, in other words, must begin with *you*.

Please complete the attached questionnaire and return it to the undersigned on or before April 30, 1982. The mileage data will be necessary in our proof of the scope of your operations both within and beyond Pennsylvania and should be based upon your four quarterly fuel use reports filed for 1981 with the Pennsylvania Department of Revenue. Trip permit information, where appropriate, will also be helpful for those carriers who are able to use this mechanism to minimize their overall costs.

We recognize that developing this information will not be an easy task, but hope that you'll agree that the undertaking is worth the investment. If you have any questions concerning this request for assistance, please feel free to call the undersigned at 202/797-5402.

/s/ Douglas A. Hughes
DOUGLAS A. HUGHES

/arg
Attachment
cc: J. R. Halladay

A National Federation Having an Affiliated Association in Each State

Please return before April 30, 1982 to:

Department of State Laws, Taxation
and Reciprocity
AMERICAN TRUCKING
ASSOCIATIONS, INC.
1616 "P" Street, N.W.
Washington, D.C. 20036

1981 MOTOR CARRIER OPERATIONS STUDY
—PENNSYLVANIA—

The following data is provided to ATA for its use in litigation challenging the constitutionality of the Pennsylvania "$25 identification marker fee" taxing scheme.

1. Total 1981 fleet mileage everywhere ———— miles.

2. Total 1981 fleet mileage in Pennsylvania ——— miles.

3. Total number of 1981 $25 identification markers purchased (both initial and supplemental applications) from the Pennsylvania Department of Revenue for display on trucks/tractors operating in Pennsylvania.

———— decals

4. Total number of $5 trip permits purchased from the Pennsylvania Department of Revenue in 1981 for operations in Pennsylvania conducted by vehicles not displaying the identification decal.

———— trip permits

5. Please identify the state(s) in which your vehicles (i.e. trucks and tractors over 17,000 lbs. GVW) are

registered and the associated number of vehicles registered in each state.

State	Number Trucks/Tractors
_____	_____
_____	_____
_____	_____
_____	_____

REMARKS:

Company Name _____

Street Address _____

City/State/Zip _____ Telephone _____

Name of Person Completing Form _____

Position _____

[PETITIONERS' EXHIBIT 4]

AMERICAN
TRUCKING
ASSOCIATIONS, INC.
1616 P Street, N.W., Washington, D.C. 20036

INDUSTRY RELATIONS DIVISION
J. R. Halladay
Managing Director

DEPARTMENT OF STATE LAWS,
TAXATION AND RECIPROCITY
Douglas A. Hughes,
Director
(202) 797-5402

March 24, 1982

MEMORANDUM

TO: Pennsylvania Truck Owners

FROM: Douglas A. Hughes

SUBJECT: *Pennsylvania Marker Fee Legality*

As you probably know, the American Trucking Associations, Inc., has sued the Commonwealth of Pennsylvania challenging the constitutionality of its "$25 identification marker fee" tax. As with our litigation in New England, we are hopeful of resolving these issues as quickly as possible in order to avoid any retaliation from other states against Pennsylvania-registered vehicles and to open the way for full Pennsylvania membership in the *International Registration Plan.*

In our pursuit of this litigation, we urgently need your help in developing necessary data to demonstrate the unconstitutionality of this taxing scheme to the court. The proof for our case, in other words, must begin with *you.*

Please complete the attached questionnaire and return it to the undersigned on or before April 30, 1982. The mileage data will be necessary in our proof of the scope of your operations both within and beyond Pennsylvania and should be based upon your four quarterly fuel use reports filed for 1981 with the Pennsylvania Department of Revenue. The vehicle data should reflect the number of vehicles in your fleet during 1981 which were registered in the Commonwealth.

We recognize that developing this information will not be an easy task, but hope that you'll agree that the undertaking is worth the investment. If you have any questions concerning this urgent request for assistance, please feel free to call the undersigned at 202/797-5402.

/s/ Douglas A. Hughes
DOUGLAS A. HUGHES

/arg
Attachment
cc: J. R. Halladay

A National Federation Having an Affiliated Association in Each State

Please return before April 30, 1982 to:

Department of State Laws, Taxation
and Reciprocity
AMERICAN TRUCKING
ASSOCIATIONS, INC.
1616 "P" Street, N.W.
Washington, D.C. 20036

1981 MOTOR CARRIER OPERATIONS
—PENNSYLVANIA—

The following data is provided to ATA for its use in litigation challenging the constitutionality of the Pennsylvania "$25 identification marker fee" taxing scheme.

1. Total 1981 fleet mileage everywhere ——— miles.
2. Total 1981 fleet mileage in Pennsylvania ——— miles.
3. Total number of motor vehicles (i.e. trucks and tractors) exceeding 17,000 lbs. gross vehicle weight registered in Pennsylvania in 1981.

   ——— trucks & tractors

4. Do you operate trucks or tractors exceeding 17,000 lbs. gross vehicle weight bearing license plates from states other than Pennsylvania? (Circle one)

   Yes No

   If yes, please designate the state(s) of registration and the number of trucks and tractors registered in each state.

State	Number Trucks/Tractors
_____	_____
_____	_____
_____	_____
_____	_____

REMARKS:

Company Name _____

Street Address _____

City/State/Zip _____ Telephone _____

Name of Person Completing Form _____

Position _____

[PETITIONERS' EXHIBIT 5]

PENNSYLVANIA FOREIGN-BASED
VEHICLE REGISTRANTS
HIGHWAY USE OPERATING CHARACTERISTICS
1981

Number of Carriers:	5,901
Number of Markers:	169,220
Number of Trip Permits:	5,505
Miles Everywhere:	12,430,631,279
Miles in Pennsylvania:	766,839,013
Percent of Miles in Pennsylvania:	6.16%
Total Marker Cost:	$4,230,500
Total Trip Permit Cost:	$27,525
Total Cost:	$4,258,025
Average Cost/Mile:	$0.0056

BEST AVAILABLE COPY

PENNSYLVANIA FOREIGN-BASED VEHICLE REGISTRANTS
HIGHWAY USE OPERATING CHARACTERISTICS
1981

REGISTRANT/OWNER	1981 MILES EVERYWHERE	1981 MILES PENNSYLVANIA	PENNA. MILES % OF TOTAL	PENNA.MILES PER TRUCK	NUMBER MARKER	NUMBER PERMITS	MARKER/PERMIT COST	COST PILE
OAKLEY MARINE SERVICES	79,507	9,154	11.51	1,144	8		$ 200	$0.0218
OAKLEY PRODUCE	86,595	820	.94	820	1		$ 25	$0.0304
OAKVIEW NURSERY INC	33,322	7,082	21.25	3,541	2	1	$ 55	$0.0077
OATEY CO	164,882	8,067	4.89	2,689	3		$ 75	$0.0092
OBORN LUMBER INC	183,334	12,916	7.04	3,229	4		$ 100	$0.0077
OBOYLE TRANSFER COMPANY INC	25,503	1,366	5.35	683	2		$ 50	$0.0366
OBRIEN MACHINERY CO	159,109	29,823	18.74	5,964	5		$ 125	$0.0041
OCEAN SALVORS COMPANY	55,008	2,272	4.13	454	5		$ 125	$0.0550
OCEANVIEW SEAFOOD CO INC	96,000	200	.20	100	2		$ 50	$0.2500
ODELL FLEMING TRUCKING INC	14,255	2,151	15.08	717	3		$ 75	$0.0348
OFFLEITCH & BEHLING INC	23,249	16,256	69.92	16,256	1		$ 25	$0.0015
OHIO BUILDING PROD INC	6,638	1,046	15.75	523	2		$ 50	$0.0478
OHIO COUNTING SCALE INC	36,005	345	.95	115	3		$ 75	$0.2173
OHIO FAST FREIGHT INC	15,967,099	3,343,381	20.93	7,885	424	20	$ 10,700	$0.0032
OHIO PACIFIC EXPRESS INC	4,964,490	55,323	1.11	1,229	45		$ 1,125	$0.0203
OHIO PACKAGING CORP	202,044	1,479	.73	295	5		$ 125	$0.0845
OHIO PALLET CO	109,597	3,570	3.24	3,570	1		$ 25	$0.0070
OHIO PLATE GLASS CO	461,221	92,244	19.99	13,177	7	4	$ 195	$0.0021
OHIO POLY CORP	172,876	26,843	15.52	13,421	2		$ 50	$0.0018
OHIO PURE FOODS INC	154,301	13,205	8.55	4,401	3		$ 75	$0.0056
OHIO RUBBER CO	285,014	16,266	5.70	1,807	9		$ 225	$0.0138
OHIO VALLEY CHEM INC	4,250	692	16.13	346	2		$ 50	$0.0722
OKLAHOMA FURN MFG CO	1,643,060	4,093	.24	186	22		$ 550	$0.1343
OLD DOMINION BOX CO INC	305,100	1,366	.44	273	5		$ 125	$0.0915
OLD DOMINION FREIGHT LINE INC	66,739,086	2,216,952	3.32	2,121	1,045		$ 26,125	$0.0117
OLD DOMINION TRUCK LEASING INC	3,124,158	214,595	6.86	2,617	82		$ 2,050	$0.0059
OLD MTHR HARD DGFD CO INC	93,724	18,745	20.00	6,248	3		$ 75	$0.0040
OLD NORTH MFG CO INC	113,571	563	.49	187	3		$ 75	$0.1332
OLEKSA ENTERPRISES INC	34,541	17,612	50.98	17,612	1		$ 25	$0.0014
OLEN B SPARCY	128,263	1,015	.79	507	2		$ 50	$0.0492
OLIN CHEMICALS RUBBER SERVICE	45,265	1,354	2.99	1,354	1		$ 25	$0.0184
OLINDOS IMPORT FOODS	32,002	14,712	45.97	7,356	2		$ 50	$0.0033
OLIVER TRUCKING CO INC	3,655,221	98,286	2.68	1,927	51		$ 1,275	$0.0129
OLSONITE CORP PLUMBERS WOODWOR	254,991	38,551	15.11	19,275	2		$ 50	$0.0012
OLYMPIA FARMS DBA GEORGE S MIN	6,267	574	9.15	574	1	1	$ 30	$0.0522
OMAN CONSTRUCTION COMPANY INC	245,558	471	.19	157	3	1	$ 80	$0.1698
ONE TRUCKING INC	287,597	2,113	.73	1,056	2		$ 50	$0.0236
ONEIDA DIST INC	94,295	9,185	9.74	4,592	2		$ 50	$0.0054
ONEIDA MOTOR FREIGHT INC	14,090,000	610,000	4.32	4,013	152		$ 3,800	$0.0062
ONEITA KNITTING MILLS	350,507	1,502	.42	500	3	1	$ 80	$0.0532
ONTARIO HARDWOOD CO INC	83,250	200	.24	200	1		$ 25	$0.1250
ONTARIO PIPELINE INC	163,154	10,977	6.72	914	12	2	$ 310	$0.0282
OQUINN TRUCK LINES	500,184	82,753	16.54	10,344	8		$ 200	$0.0024
ORBIT TRANSPORT INC	2,666,258	99,178	3.71	901	110		$ 2,750	$0.0277
OREGON METALLURGICAL CORP	1,436,219	52,062	3.62	4,004	13		$ 325	$0.0062

[PETITIONERS' EXHIBIT 7]

PENNSYLVANIA-BASED INTERSTATE
VEHICLE REGISTRANTS
HIGHWAY USE OPERATING CHARACTERISTICS
1981

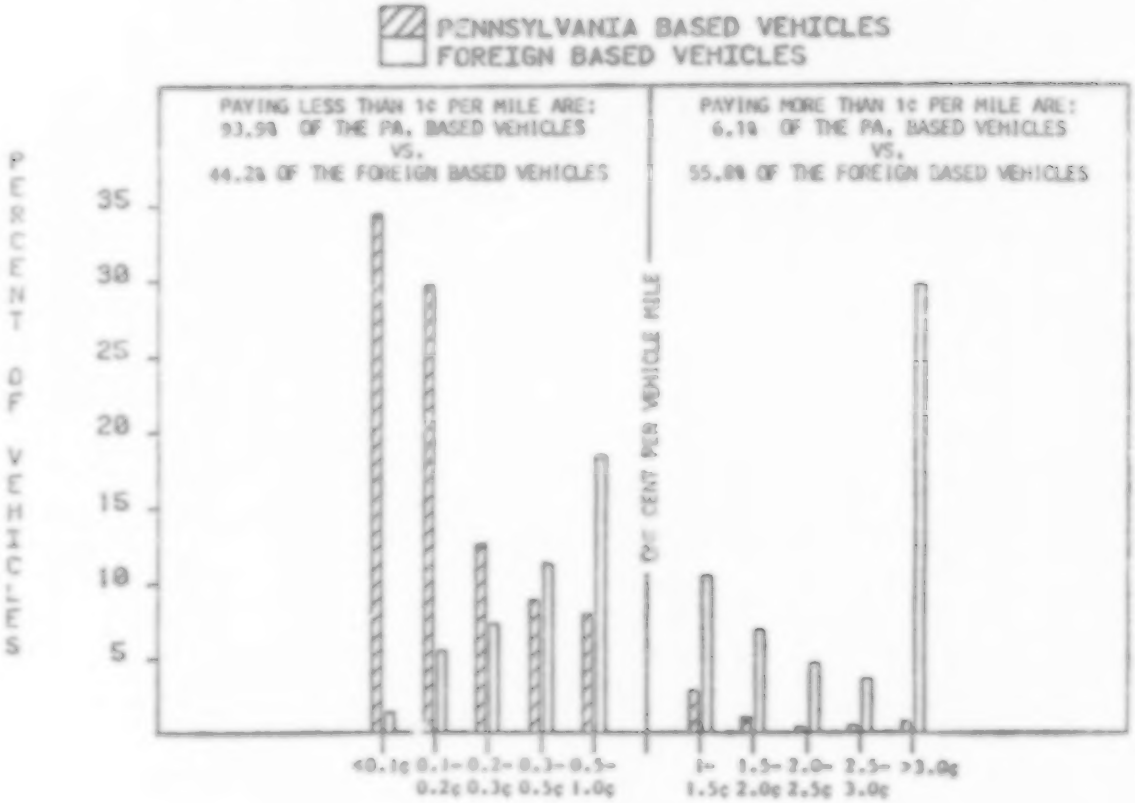
Number of Carriers:	953
Number of Vehicles:	14,253
Miles Everywhere:	709,645,219
Miles in Pennsylvania:	326,798,025
Percent of Miles in Pennsylvania:	46.05%
"Deemed" Marker Cost:	$356,326
Average Cost/Mile:	$ 0.0011

[PETITIONERS' EXHIBIT 10]

PENNSYLVANIA MARKER FEE COST COMPARISON
PENNSYLVANIA-BASED CARRIERS
v. FOREIGN-BASED CARRIERS
1981

Penna-Based			Foreign-Based	
% Total	Number	Cost/Mile	Number	% Total
0.8%	8	over 3.0¢	1,752	29.7%
0.0	0	2.9-3.0	35	0.6
0.0	0	2.8-2.9	43	0.7
0.1	1	2.7-2.8	47	0.8
0.0	0	2.6-2.7	30	0.5
0.5	5	2.5-2.6	63	1.1
0.0%	0	2.4-2.5¢	43	0.7%
0.0	0	2.3-2.4	52	0.9
0.1	1	2.2-2.3	53	0.9
0.1	1	2.1-2.2	60	1.0
0.3	3	2.0-2.1	74	1.3
0.0%	0	1.9-2.0¢	65	1.1%
0.2	2	1.8-1.9	82	1.4
0.3	3	1.7-1.8	79	1.3
0.4	4	1.6-1.7	91	1.5
0.2	2	1.5-1.6	101	1.7
0.1%	1	1.4-1.5¢	89	1.5%
0.3	3	1.3-1.4	101	1.7
1.0	10	1.2-1.3	145	2.5
0.2	2	1.1-1.2	137	2.3
1.3	12	1.0-1.1	153	2.6
0.4%	4	0.9-1.0¢	177	3.0%
0.8	8	0.8-0.9	187	3.2
1.2	11	0.7-0.8	204	3.5
2.2	21	0.6-0.7	254	4.3
3.5	33	0.5-0.6	262	4.4
3.0%	29	0.4-0.5¢	312	5.3%
6.0	57	0.3-0.4	354	6.0
12.7	121	0.2-0.3	435	7.4
29.7	283	0.1-0.2	331	5.6
34.4	328	under 0.1	90	1.5

PENNSYLVANIA MARKER FEE - CENTS PER VEHICLE MILE
PENNSYLVANIA DOMICILED VS FOREIGN BASED (OUT OF STATE)



[PETITIONERS' EXHIBIT 12]

All Pennsylvania-Based Motor Carrier Vehicles (1981)

Total Motor Carrier Vehicles	130,910 vehicles
Total "Deemed" Marker Cost @ $25.00	$3,272,750
Total Pennsylvania Miles	3,385,000,000 miles
Total Cost/Mile	$.0010

All Foreign-Based Motor Carrier Vehicles (1981)

Total Motor Carrier Vehicles	399,240
Total Actual Marker Cost @ $25.00	$9,981,000
Total Pennsylvania Miles	1,811,000,000 miles
Total Cost/Mile	$.0055

[PETITIONERS' EXHIBIT 13]

"FOREIGN-BASED" CARRIERS WHICH PURCHASED 1000 OR MORE MARKER DECALS, 1981

	Miles Penna.	Cost of Markers/ Permits (Dollars)
Aero Mayflower Trucking Co., Inc.	3,439,630	$ 74,890
Allied Van Lines, Inc.	5,031,461	107,325
Bekins Van Lines Co.	1,842,522	50,000
Bowman Transportation, Inc.	482,552	27,750
C & H Transportation	2,879,511	49,510
Carolina Freight Carriers Corp.	10,395,206	26,500
Consolidated Freightways	19,101,807	72,750
Ford Truck Leasing Division Gelco	6,652,231	52,000
Halls Motor Transit Co.	19,909,626	36,250
International Transport, Inc.	2,105,574	39,300
Lend Lease Division National Car Rental System	3,054,630	31,230
North American Van Lines, Inc.	19,205,177	161,025
Old Dominion Freight Line, Inc.	2,216,952	26,125
Riss International Corp.	8,927,529	35,000
Roadway Express, Inc.	39,031,524	80,600
Rollins Leasing Corp.	9,133,722	63,160
Ryan Leasing Co. Division Ryan Fin.	4,727,749	38,050
Saunders Leasing System, Inc.	5,658,437	65,820
Smiths Transfer Corp.	12,122,163	39,375
Tri State Motor Transit Co.	2,697,171	35,620
Yellow Freight System, Inc.	25,181,632	62,055
TOTALS	203,796,806	$ 1,174,335

AVERAGE COST PER MILE

$$\frac{\text{Decal Permit Cost}}{\text{Penna. Miles}} = \frac{1,174,335}{203,796,806} = .00576$$

PERCENTAGE OF TOTAL "FOREIGN-BASED" PENNA. MILES

$$\frac{\text{Total Above}}{\text{Grand Total*}} = \frac{203,796,806}{766,839,013} = 26.58$$

*Source: Petitioners' Exhibit No. 5 (cover sheet total)

IN THE COMMONWEALTH COURT
OF PENNSYLVANIA

No. 315 C.D. 1982

CLASS ACTION

AMERICAN TRUCKING ASSOCIATIONS, INC., *et al.*,
Petitioners,

vs.

ROBERT K. BLOOM, Secretary of the Department of Revenue, *et al.*,
Respondents.

Washington, D.C.
Friday, May 13, 1983

DEPOSITION OF DOUGLAS A. HUGHES,

A WITNESS, CALLED FOR EXAMINATION BY COUNSEL FOR THE RESPONDENTS, PURSUANT TO NOTICE, AT THE OFFICES OF THE AMERICAN TRUCKING ASSOCIATIONS, 1616 P STREET, N.W., WASHINGTON, D.C., BEGINNING AT 9:35 A.M., BEFORE ARLENE F. VAUGHN, A NOTARY PUBLIC IN AND FOR THE DISTRICT OF COLUMBIA, WHEN WERE PRESENT ON BEHALF OF THE RESPECTIVE PARTIES:

FRIEDLI, WOLFF & PASTORE, INC.
1735 EYE STREET, N.W., SUITE 811
WASHINGTON, D.C. 20006
202/331-1981

* * * *

You want him to answer that it's a fair statement of what you understand it to be.

BY MR. HOFFMAN:

Q. I was just trying to see if I could find a nice statement of what was your goal in doing the survey.

MR. LITTLETON: Why don't you ask him that as opposed to paraphrasing it.

BY MR. HOFFMAN:

Q. My question is what is the goal that you had and is what I read a reasonable statement of your goals. If it's not, give me a different one.

A. The goal of the survey was to determine the relationship of cost for Pennsylvania-based vehicles as compared to foreign-based vehicles with respect to the $25 fee imposition.

Q. In the language of exhibit 2, you, hoped, quote, to show the court that this taxing scheme falls so much more heavily on interstate trucks based in states other than Pennsylvania than Pennsylvania-based trucks that it fails to meet the constitutional criteria established by the Supreme Court, close quote.

A. That's what the sentence says.

Q. Do you have any quarrel with that statement you wrote?

A. Certainly not.

Q. My understanding from the Maryland deposition is that you have a bachelor of science degree in economics and statistics. Am I right?

A. That is correct.

Q. Do you have any postgraduate education in either one of those areas?

A. No.

Q. Or in any area?

A. No.

Q. Was that a double major you qualified for?

A. Yes.

Q. Would you be able to tell us what your exposure was as an undergraduate in the areas of statistics and the area of survey research?

A. I don't understand the question.

Q. Did you take courses in the area of statistics?

• • • •

[RESPONDENTS' EXHIBIT 4]

SURVEY QUESTIONNAIRES: BASIC DATA

"Pennsylvania-Based"			"Foreign-Based"	
#'s	% of Total		#'s	% of Total
21,806	100%	Distributed	31,358	100%
20,116	92.2%	Not Returned	24,930	79.6%
1,690	7.8%	Returned	6,428	20.4%
737	3.3%	Rejected	527	1.7%
953	4.5%	Used	5,901	18.8%

[RESPONDENTS' EXHIBIT 6]

"Foreign-Based" Carriers With Data Sheets, Question No. 5, Reflecting Pennsylvania Registered Vehicles

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Source: Data Sheets Supporting Pages 11, 37, 63, 89 and 115 of Computer Print-Out of "Pennsylvania Foreign-Based Vehicle Registration, Highway Use Operating Characteristics, 1981"

Total Number in Sample: 222

Number in Sample with Pennsylvania Registered Vehicle: * 20

Percent of Sample: 9%

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* NOTE: Does not include data sheets which, although reflecting Pennsylvania-registration, appear to a certainty to have misinterpreted Question 5 on the data sheets.

IN THE COMMONWEALTH COURT
OF PENNSYLVANIA

No. 315 C.D. 1982

AMERICAN TRUCKING ASSOCIATIONS, INC., *et al.*,
Petitioners

v.

ROBERT K. BLOOM, Secretary of the Department of Revenue, *et al.*,
Respondents

STIPULATION

Petitioners commenced this action to have Section 2102 of the Vehicle Code, 75 Pa. C.S. § 2102, declared unconstitutional and all enforcement of it enjoined.

Since Section 2102 requires, under penalty of law, every motor carrier vehicle operating into, from or through Pennsylvania to bear an identification marker costing $25.00 per year to demonstrate compliance with the Motor Carriers Road Tax Act, affected motor carriers are presently in the process of paying $25.00 per vehicle for such markers for the year beginning on April 1, 1982.

In an effort to have the Court establish an escrow or similar type arrangement to safeguard the payments being made by affected motor carriers for identification markers pending the outcome of this suit, petitioners filed a Motion for Special Injunction together with their Petition for Review.

To avoid the time and expense of a hearing on the Motion, however, petitioners and respondents have reached the following Stipulation concerning the disposition of the payments in question:

1. Respondents agree that, if petitioners prevail upon the merits of their Petition for Review, pursuant to 72

P.S. § 503, all affected motor carriers will be entitled to receive a refund of payments for identification markers for the year beginning April 1, 1982. Further, respondents agree that the motor carriers will receive a refund of such payments under the terms set forth below.

2. Within ninety (90) days after a final decision on the merits in which Section 2102 shall have been declared unconstitutional or its enforcement enjoined and all appeals have been exhausted or abandoned, respondents shall refund all payments for identification markers for the year beginning April 1, 1982. If, after (80) days from the date of the final decision, respondents reasonably believe for reasons not foreseeable at the time of this Stipulation that they will not be able to complete all refunds within the ninety (90) day period, they shall have the right to apply to the Commonwealth Court for an appropriate modification of this paragraph.

3. Respondents agree that, in the event refunds are due, they will identify and transmit the correct amount of refund to each affected motor carrier. Respondents further agree that no affected motor carrier will be required to proceed before the Board of Finance and Revenue or otherwise come forward with any type of proof in order to be entitled to such refund.

4. If for any reason a motor carrier entitled to receive a refund for identification markers for the year beginning April 1, 1982 does not receive a refund in the correct amount from respondents pursuant to paragraph 3, the motor carrier, upon submitting reasonable proof of such entitlement in writing addressed to Andrew S. Gordon, Esquire, Office of Attorney General, 16th Floor, Strawberry Square, Harrisburg, PA 17120, shall forthwith receive the proper refund. Notwithstanding the alternate procedure described in this paragraph, it is the intent of this Stipulation that refunds will be made under the procedure set forth in paragraph 3.

5. Petitioners and respondents agree to defer the question of whether affected motor carriers are entitled to receive interest upon any payments refunded to them. Affected motor carriers shall recover from respondents such interest upon the amounts refunded to them as the law may provide at the time the refunds are made.

6. Nothing in this Stipulation shall be construed to relieve motor carriers from complying with the requirements of Section 2102 or from payment of the Motor Carriers Road Tax, as provided for in the Motor Carriers Road Tax Act, Act of June 19, 1964, P.L. 7, *as amended*, 72 P.S. §§ 2617.1-2617.26.

7. This Stipulation relates solely to a procedure for refunds if petitioners ultimately prevail on their claims and neither petitioners nor respondents shall, by virtue of having entered into this Stipulation, be deemed to have waived any claim, defense or position regarding the merits of this action.

8. In consideration of the covenants and agreements above, petitioners withdraw the Motion for Special Injunction previously filed.

[Illegible]
Attorney for Petitioners

[Illegible]
Attorney for Respondents

Date: February 25, 1982

The within stipulation is approved hereby February 25, 1982.

/s/ J. MacPhail
Judge

CERTIFIED FROM THE RECORD
FEB 26 1982

/s/ Francis C. Barbush
Chief Clerk

Section 3. This act shall take effect immediately except that the provisions of section 2102 which relate to the increase in the annual fee for identification markers shall be applicable only to those markers acquired after the effective date of this act and shall not affect any valid current identification markers for the remainder of the period for which they were issued and except that the provisions of section 2104 (relating to penalties) shall take effect in 60 days.

On the question.

Will the House agree to the amendments?

The SPEAKER. The Chair recognizes the gentleman from Lehigh, Mr. Zeller.

Mr. ZELLER. Mr. Speaker, to help all of us, I believe if we take the section of the amendment on the second page, all they corrected is the $2 to $25. Is that all that has been corrected?

The SPEAKER. The Chair will recognize the sponsor of the amendment, Mr. Michlovic.

Mr. MICHLOVIC. Yes. You are correct, Mr. Speaker. The only change was changing the $2 to $25.

The SPEAKER. The Chair recognizes the gentleman from Lancaster, Mr. Wenger.

Mr. WENGER. Mr. Speaker, if we impose the $25 fee on out-of-state trucks, I am sure that we will find neighboring states retaliating. They have always done this in the past when we tried this type of thing.

I think this amendment is the kind of amendment that is ill-conceived. It was drawn hastily in an attempt to raise revenue to balance the budget. I think it is going to come back to haunt us.

This amendment not only would apply to fleets of trucks but would apply to individual trucks. We can see that if neighboring states pass similar legislation in

retaliation, for instance, you could have a farmer with a farm truck, one truck, that is used only seasonally, and he might take his produce, his apples, or his peaches into New York State to sell them. He would have to buy a sticker there. He might go into the State of Maryland to buy fertilizer several times a year. He would have to buy a sticker there. He might go into New Jersey once a year to buy chemicals. He would have to buy a sticker there. You end up penalizing a truck that is used very little and already is paying a license fee in proportion considerably more per miles traveled and per pounds hauled than anyone else, and he is going to end up paying perhaps several hundred dollars in fees to other states.

I think it is the kind of thing that is very regressive. When you look at the amount of money that it raises for our state and you look at the penalty that it is going to place upon our economy and upon the people in Pennsylvania, the resulting price and higher price to consumers. I think it is imperative that we reject this amendment, and I call for a "no" vote. Thank you, Mr. Speaker.

The SPEAKER. The Chair recognizes the minority whip.

Mr. MANDERINO. Mr. Speaker, I rise in support of this amendment. This amendment will bring in, as estimated, somewhere around $9.2 million. This is for the registration increase on the out-of-state truckers.

In addition to that particular feature of this bill, there will also be additional moneys because of the tightening of the loopholes that are contained in this bill on truckers who come through Pennsylvania and we are not getting our fair share of liquid fuel taxes from them. In the first place, we cannot find them because of the procedures presently used which exempt a whole category of trucks coming in from out of state. We cannot identify them because some of them are reciprocal states. We are a corridor state in Pennsylvania, and to receive the amount of money in the liquid fuel fund that we now receive

being a corridor state, it is obvious that we need the Michlovic amendment to tighten up the procedures in addition to the registration increase.

It is estimated, Mr. Speaker, by our revenue people in the Appropriations Committee that in addition to the $9 million that will come in on registrations, we will receive in the liquid fuel fund because of the procedures an additional low figure of about $15 million and an additional high figure of about $25 million.

Now, Mr. Speaker, when we received these revenue estimates, we talked to Mr. Cohen—I did not personally; it is my understanding the staff did—to review with him whether or not what we were saying would be true so far as additional moneys in the liquid fuel fund. Although he was not willing to certify that those estimates that we had would occur, he did say in his personal opinion he thought our figures were correct, that we would receive this additional $15 million to $25 million in the liquid fuel tax. This is money we are missing because of our procedures from the out-of-state truckers, and we ought to be picking this up in the liquid fuel tax and the registration and the tightening of loophole procedures that are affected by this bill.

I urge an affirmative vote, Mr. Speaker.

The SPEAKER. The Chair recognizes the gentleman from Cambria, Mr. Yahner.

Mr. YAHNER. Mr. Speaker, I hate to go against our good leader here, but in this case this amendment, I think, is a very bad amendment. It will raise the cost of trucking not only for industry but also for farmers. It will also have an effect on your food prices.

Just as sure as God made green apples, if we impose this $25 fee on out-of-state trucks coming into Pennsylvania, you will wake up the next morning and they will be doing the same to us. It will just be a double taxation, and I would hope that everyone would vote to oppose this amendment. Thank you.

The SPEAKER. The Chair recognizes the gentleman from Snyder, Mr. Thomas.

Mr. THOMAS. Mr. Speaker, my remarks will not change basically from what I said prior to the corrected amendment. I am sure this amendment could work in the adverse for Pennsylvania. Although it might collect more revenue immediately for Pennsylvania, it could work in the adverse because of those states which would say, what Pennsylvania does to us, we will do to them.

I would strongly recommend that you think about it and vote "no" on this amendment.

The SPEAKER. The Chair recognizes the minority whip.

Mr. MANDERINO. Mr. Speaker, very briefly, we were concerned when we first came up with the procedures of this bill about what effect it would have on Pennsylvania truckers. We had the arm of the legislature, the Legislative Office for Research Liaison, do a study to determine what dollar effect it would have on Pennsylvania truckers. Now the bill is going to bring in $9 million in fees. It is also going to bring in from $15 million to $25 million in liquid fuel taxes, and its effect on Pennsylvania as established by our research arm would be about $1 million spread through all the truckers in Pennsylvania. I think that is a negligible figure based on what we are going to take in, and I think we ought to vote in favor of this bill.

The SPEAKER. The Chair recognizes the gentleman from Lehigh, Mr. Zeller.

Mr. ZELLER. Mr. Speaker, what was said by Mr. Thomas, Mr. Wenger, and Mr. Yahner is true. I would like to remind you what happened last session.

Mr. Klingaman introduced a bill that was a reciprocity against a neighboring state. Because of our produce going into that state, they charged us a license. We had a big meeting on this. Everybody was alarmed. Mr. Yahner was chairman. We put through a bill here to nail those states that would do it to us, and that is exactly what is going to happen here—reciprocity. We had

a dose of that last session, and here we are right back again, and now we are creating it.

Now the problem is going to be the cost upon the consumer. I have checked with every one of our trucking firms which we have in my area from the largest, Yellow Freight, Roadway, all the way down to the smallest trucking firm, and they are all against it. They are also very disturbed. You are going to get a double whammy on them when HB 613 comes up, and with this one we are really going to get hit.

So I tell you, if you have any kind of respect at all for the consumer, who is going to be charged for it because there is no free ride and they are going to get nailed, you might as well knock it down.

The SPEAKER. The Chair recognizes the gentleman from Allegheny, Mr. Michlovic.

Mr. MICHLOVIC. Mr. Speaker, I would beg to differ with the prior speaker. There is a free ride right now. There is a free ride for truckers who go through Pennsylvania, take advantage of the reciprocal agreements, are not audited on their liquid fuels accounts, have no incentive therefore to buy gas in Pennsylvania. They buy gas in neighboring states, get a credit in those states for their gas purchases, and they do not pay any liquid fuels tax to Pennsylvania.

I say they are getting a free ride, and we should stop it now.

The SPEAKER. The Chair recognizes the gentleman from Butler, Mr. Burd.

Mr. BURD. Mr. Speaker, I would just like to point out one thing that the gentleman made a statement on. I hope that he is aware of the fact that we do have a fuel and road use tax law in effect in Pennsylvania right now. I would like to explain that just a little bit if you will give me the time.

In the event that a truck does travel through Pennsylvania and it does not buy fuel in our state, it is required to pay 4 cents per mile for running in the state

and, of course, it is up to the office that we have and the laws that we have to collect those moneys. Those trucking firms are being audited and, if it was done properly, it could amount into the fifties of millions of dollars. If you could just visualize Interstate 80 alone, with that formula that I just gave you, it would amount to around $12 just to travel the length of Interstate 80, and multiply that by 10,000 trucks per day. I am sure that you mathematicians could figure that out very quickly what that would amount to.

I am saying here that if we would enforce that, it would be a much better thing to do than to try and impose another tax on out-of-state trucks and get into reciprocity problems that we have been talking about today. I certainly urge all of my colleagues on this side and that side of the aisle to vote "no" on this amendment. Thank you, Mr. Speaker.

The SPEAKER. The Chair recognizes the minority whip.

Mr. MANDERINO. Mr. Speaker, the gentleman who just spoke is entirely correct. We do have that kind of a thing on the books. That is what we are enforcing. That is what we are talking about, not a new tax. We are talking about that tax which you referred to, the logging of miles in Pennsylvania. The enforcement procedures are terrible and that is what we are trying to correct with this bill.

The SPEAKER. The Chair recognizes the gentleman from York, Mr. Foster.

Mr. A. C. FOSTER. Mr. Speaker, this is indeed an amendment to the Motor Carrier Road Tax Act of Pennsylvania which we currently have. The most significant change is the increase in the fee for the decal to $25; but perhaps the most significant part of all is the changing of the enforcement procedure from that of a misdemeanor to a summary offense. This indeed has been needed for a long time because, frankly, the State Police do nothing to enforce the Motor Carrier Act at the pres-

ent time because of the clumsy enforcement procedure, the necessity to go into court. It just is not enforced and, furthermore, with many trucks from reciprocal states plus the owner-operators of one truck on an out-for-hire basis which is not decaled, the State Police are at a loss to enforce the act.

The amendment is a good one. I think that we should vote in the affirmative.

The SPEAKER. The Chair recognizes the gentleman from Philadelphia, Mr. Salvatore.

Mr. SALVATORE. I concur with my colleague, Mr. Foster, who worked in road taxes for 10 years. So I think that he knows a little about road taxes. One of the provisions of this amendment which he spoke to was that we change it from a misdemeanor to a summary. That is a very important change because, as he stated, the State Police would not stop any trucks because once they did stop a truck, the question would arise, who would physically impound a truck while it was a misdemeanor. If you make it a summary, the man pays his fine and he is on his way. That is why the law is not being enforced in Pennsylvania today.

AXLE TAX CASE

IN THE COMMONWEALTH COURT
OF PENNSYLVANIA

No.

CLASS ACTION

AMERICAN TRUCKING ASSOCIATIONS, INC.
1616 "P" Street, N.W.
Washington, D.C. 20036,

TRI-STATE MOTOR TRANSIT COMPANY
P.O. Box 113
Joplin, Missouri 64802,

INTERSTATE VAN LINES, INC.
5801 Rolling Road
West Springfield, Virginia 22152,

INTERSTATE TRUCK LEASING, INC.
2700 Palmyra Road
Albany, Georgia 31707

and

ASTRO CONTAINER COMPANY,
A Division of ALLIED DRUM SERVICES, INC.
P.O. Box 41046
Evendale, Ohio 45241,

individually and on behalf of a
class of interstate motor carriers
similarly situated,

Plaintiffs,

v.

ROBERT K. BLOOM, Secretary of the
Department of Revenue of the
Commonwealth of Pennsylvania
11th Floor Strawberry Square
Harrisburg, PA 17127,

LEROY S. ZIMMERMAN, Attorney General
of the Commonwealth of Pennsylvania,
16th Floor Strawberry Square
Harrisbury, PA 17127, and

DANIEL F. DUNN, Commissioner of
the State Police of the Commonwealth
of Pennsylvania
1800 Elmerton Avenue
Harrisburg, PA 17109,

Defendants.

PETITION FOR REVIEW

Nature of the Action

1. This is a class action seeking to enjoin and have declared unconstitutional under both the United States and Pennsylvania Constitutions the various provisions of the Axle Tax For Highway Bridge Improvement Act ("Axle Tax"), 75 Pa. C.S. § 9901 *et seq.*, as they impose a new tax upon motor carriers operating certain motor carrier vehicles within the Commonwealth. 75 Pa. C.S. § 9902 ("Section 9902"), which imposes the tax, will take effect on April 1, 1983, and requires the operator of each motor carrier vehicle (defined as "every truck, truck tractor or combination having a gross weight or registered gross weight in excess of 26,000 pounds") entering into and operating on the roads of the Commonwealth to pay a tax equal to $36 per axle of each vehicle.

2. The plaintiffs, on behalf of themselves and the class of all interstate motor carriers similarly situated, contend and in this action seek to prove that Section 9902 of the Vehicle Code, facially and actually:

(a) discriminates against and burdens interstate commerce in violation of the Commerce Clause of the U.S. Constitution, Article I, Section 8;

(b) deprives motor carriers operating non-Pennsylvania-based motor carrier vehicles of rights, and subjects them to obligations not shared by motor carriers operating motor carrier vehicles based in the Commonwealth, in violation of the Privileges and Immunities Clause of the U.S. Constitution, Article IV, Section 2;

(c) is incompatible with and contrary to federal law and regulations on a subject matter in which the federal standards preempt and preclude inconsistent state requirements in violation of the Supremacy Clause of the Constitution, Article VI, Section 2;

(d) deprives motor carriers operating non-Pennsylvania-based motor carrier vehicles of the equal protection of the laws in violation of the Fourteenth Amendment to the U.S. Constitution and of rights, privileges or immunities secured by the Constitution and laws of the United States in violation of 42 U.S.C. § 1983; and

(e) constitutes a tax upon a single class of subjects within the territorial limits of the Commonwealth, which tax is not uniform in its impact upon motor carriers operating non-Pennsylvania-based motor carrier vehicles and motor carriers operating motor carrier vehicles registered in Pennsylvania, in violation of the uniformity provision of the Pennsylvania Constitution, Article 8, Section 1.

Jurisdiction

3. The original jurisdiction of this Court is invoked pursuant to 42 Pa. C.S. § 761(a) in that this is a civil action brought against duly appointed and authorized officers of the Commonwealth government acting in their official capacities. Declaratory relief is prayed for under the provisions of the Declaratory Judgment Act, 42 Pa. C.S. § 7531 *et seq.*, and preliminary and permanent injunctive relief is sought pursuant to Pa. R.C.P. 1501-1550 governing actions in equity, which rules are appli-

cable to the instant proceedings as a result of Pa. R.A.P. 106.

The Parties

4. Plaintiff American Trucking Associations, Inc. ("ATA") is a national non-profit corporation organized and operating under the non-profit corporation laws of the District of Columbia and with its principal place of business located there. ATA is a federation of 51 state trucking associations, including the District of Columbia, and 13 national conferences. It represents every type and geographical scope of motor carrier operation in the United States, including over 10,000 interstate for-hire carriers, and tens of thousands of private and local carriers, many of whose motor carrier vehicles are qualified for operation within the Commonwealth of Pennsylvania and are subject to the requirements of Section 9902 of the Vehicle Code.

5. Plaintiff Tri-State Motor Transit Company (hereinafter referred to as "Tri-State") is a Delaware corporation with its principal place of business located in Joplin, Missouri. Tri-State is an interstate motor carrier as defined in the Interstate Commerce Act operating under certificates of authority issued by the Interstate Commerce Commission. At present all of its motor carrier vehicles are qualified for operation within the Commonwealth of Pennsylvania and are subject to the Axle Tax imposed by Section 9902 of the Vehicle Code.

6. Plaintiff Interstate Van Lines, Inc. (hereinafter referred to as "Interstate") is a Virginia corporation with its principal place of business located in West Springfield, Virginia. Interstate is an interstate motor carrier as defined in the Interstate Commerce Act operating under certificates of authority issued by the Interstate Commerce Commission, and engaged in the transportation of household goods. At present all of its motor carrier vehicles are qualified for operation within the Com-

monwealth of Pennsylvania and are subject to the Axle Tax imposed by Section 9902 of the Vehicle Code.

7. Plaintiff Interstate Truck Leasing, Inc. (hereinafter referred to as "Leasing") is a Georgia corporation with its principal place of business located in Albany, Georgia. Leasing is engaged in the business of leasing and renting trucks. At present all of its rental vehicles are qualified for operation within the Commonwealth of Pennsylvania and are subject to the Axle Tax imposed by Section 9902 of the Vehicle Code.

8. Plaintiff Astro Container Company (hereinafter referred to as "Astro") is a division of Allied Drum Services, Inc., which is a Kentucky corporation with its principal place of busines in Louisville, Kentucky. Astro's principal place of business is in Evendale, Ohio. Astro operates a private fleet of motor carrier vehicles for the delivery of its manufactured products, which fleet is subject to Axle Tax imposed by Section 9902 of the Vehicle Code.

9. Plaintiffs have a direct, personal and particular interest in legislation that purports to tax the movement of motor carrier vehicles into, from and through Pennsylvania in that trucks, truck tractors and combinations owned and operated by plaintiffs and/or their affiliates must travel within the Commonwealth in order to transport and deliver goods and merchandise in interstate commerce.

10. The defendants in this action are the individuals empowered by law to administer and enforce the legislation challenged herein. Each of the defendants is a citizen of Pennsylvania and their duties and responsibilities are as follows:

(a) Robert K. Bloom is Secretary of the Department of Revenue, who is charged with the duty to administer and enforce the provisions of the Axle Tax.

(b) Leroy S. Zimmerman is Attorney General of the Commonwealth of Pennsylvania and is charged with the duty to enforce the laws of the Commonwealth.

(c) Daniel F. Dunn is Commissioner of the Pennsylvania State Police and is charged with the duty to enforce the laws of the Commonwealth. (Defendants are hereinafter referred to collectively as "the Commonwealth.")

* * * *

The Class

13. The class sought to be represented by the named plaintiffs is the class of all interstate motor carriers whose motor carrier vehicles: (a) are based in jurisdictions other than Pennsylvania; (b) are or will be subject to the Axle Tax of Section 9902 of the Vehicle Code; and (c) are or will be taxed at the rate of $36 per axle.

Factual Background

14. The nature of the interstate transportation services provided by most of the plaintiff class and their affiliates requires them to qualify substantially all of their vehicles for operation in Pennsylvania notwithstanding that in any given year some of those vehicles may never enter into the Commonwealth. Use of the highways of this Commonwealth by a particular interstate motor carrier vehicle during any particular year is largely unpredictable and is subject to factors over which the carrier has no control, such as customer demand, pick-up location and ultimate destination.

15. During the coming year, plaintiff Tri-State's interstate motor carrier vehicles will all be qualified to operate within the Commonwealth, and the Axle Tax required under Section 9902 will be paid for each vehicle, at an initial total cost of $207,000.

16. During the coming year, plaintiff Interstate's interstate motor carrier vehicles will all be qualified to oper-

ate within the Commonwealth, and the Axle Tax required under Section 9902 will be paid for each vehicle, at an initial total cost of $21,780.

Operation Of The Axle Tax For Highway Bridge Improvement

17. The Axle Tax for Highway Bridge Improvement was enacted as Section 3 of Act 234 of the Laws of 1982. Act 234 is attached hereto as Exhibit A and incorporated herein by reference.

18. Act 234 was signed into law by Governor Thornburgh on December 8, 1982, and the Axle Tax provisions thereof become effective on April 1, 1983.

19. Section 9902 imposes an annual tax on all motor carriers in the amount of $36 per axle of each motor carrier vehicle (defined as "every truck, truck tractor or combination having a gross weight or registered weight in excess of 26,000 pounds") operated within the Commonwealth.

20. 75 Pa. C.S. § 9903 requires that this Axle Tax be paid to the Department of Revenue ("Department") at the time of registration of Pennsylvania-based motor carrier vehicles (June 1) or, in the case of non-Pennsylvania-based vehicles, at the time of the issuance of and payment for the vehicle identification marker or permit required by 75 Pa. C.S. § 2102 (April 1). The identification marker is required to demonstrate compliance by non-Pennsylvania carriers with the record-keeping and tax-paying requirements of the Motor Carriers Road Tax Act, 72 P.S. § 2617.1 *et seq.*

21. No registration card or vehicle identification marker will be issued by the Department unless the Axle Tax has been paid, and the card or marker will be prima facie evidence that the Axle Tax has been paid.

22. 75 Pa. C.S. § 9905 provides that the full tax of $36 per axle shall be imposed only after a vehicle has traveled at least 2,000 miles in the Commonwealth.

23. For vehicles traveling less than 2,000 miles in the Commonwealth, a portion of the full $36-per-axle tax may be rebated pursuant to rules and regulations to be promulgated by the Department. Act 234 provides that, upon application by the motor carrier after the close of the preceding year, the Commonwealth will rebate a percentage of the tax equal to a ratio of the miles less than 2,000 operated in the Commonwealth to the minimum 2,000 miles.

24. For example, a motor carrier whose vehicle operated 1,500 miles in the Commonwealth will compute its rebate as follows:

Step 1: $\frac{2{,}000 - 1{,}500}{2{,}000} = .25$

Step 2: $.25 \times \$36 = \$9$ per axle rebate

25. 75 Pa. C.S. § 9906 provides that failure to comply with the Axle Tax subjects the offender to fines up to $500 and/or imprisonment for up to 90 days. These penalties will be administered in addition to and in conjunction with the fines up to $500 and/or imprisonment for up to 90 days which may be imposed for failure to comply with the marker decal provisions of 75 Pa. C.S. § 2102.

26. Pursuant to 75 Pa. C.S. § 2104, as amended by Act 234, employees of defendant Bloom have the authority throughout the Commonwealth to arrest on view, without warrant, the driver of a motor carrier vehicle engaged in any operations without having paid the Axle Tax, and, upon probable cause that such violation has occurred, to search and seize the vehicle and its contents so operated.

The Disparate Impact Of The Axle Tax On Pennsylvania And Non-Pennsylvania-Based Motor Carrier Vehicles

27. Section 1 of Act 234 amends 75 Pa. C.S. § 1916 ("Section 1916") to reduce the existing Pennsylvania annual registration fees for motor carrier vehicles in excess of 26,000 pounds gross vehicle weight as follows:

Weight	Amount Reduced
26,001-40,000	$72
40,001-60,000	108
60,001-73,280	144
73,281-80,000	180

28. The reductions in annual registration fees caused by Act 234 are in multiples of $36 and begin at the weight class where the Axle Tax is first imposed—26,000 pounds.

29. These reductions were intended to and do *exactly offset* the impact of the Axle Tax, in each weight class, upon motor carriers operating motor carrier vehicles which are registered in Pennsylvania.

30. For example, under the annual registration fee schedule set out in Section 1916 for the 1982 registration year, truck tractor and trailer combination registered in Pennsylvania for a maximum weight of 80,000 pounds would pay $1125 for a one-year registration.

31. For the 1983 registration year, that same five-axle combination will pay only $945 under the Section 1916 annual registration fee schedule as amended by Act 234. However, that combination must now also pay $36 per axle for each of its five (5) axles, or a total Axle Tax of $180.

32. The $945 registration fee plus the $180 Axle Tax paid by the motor carrier operating a Pennsylvania-based vehicle will cause it to pay $1125 to register its vehicle in the Commonwealth—exactly the same amount as the registration fee prior to Act 234.

33. The real effect of the above-mentioned reductions in the annual registration fees for Pennsylvania-based motor carrier vehicles is to eliminate any financial effect of the Axle Tax upon those vehicles.

34. That is, the operating cost per mile incurred by Pennsylvania-based motor carrier vehicles during the 1983 registration year (June 1, 1983-May 31, 1984) will remain constant, and they will bear *none* of the burden of the Axle Tax.

35. As a result, the full burden of the Axle Tax will fall upon motor carriers with motor carrier vehicles based in jurisdictions other than Pennsylvania. That burden is very great.

36. For a non-Pennsylvania-based five-axle motor carrier vehicle, operating costs will increase by *$180 per vehicle* as a direct result of the Axle Tax.

37. If that motor carrier vehicle travels 2,000 miles in the Commonwealth, its operating cost will increase by 9 cents per mile as a result of the imposition of the Axle Tax, computed as follows:

$$\frac{\$180 \text{ Axle Tax}}{2{,}000 \text{ miles}} = \$.09 \text{ per mile}$$

38. Assuming a fuel consumption rate of 4.9 miles per gallon for a motor carrier vehicle operating at 80,000 pounds, 9 cents per mile of Axle Tax equates to a 44 cent per gallon fuel tax.

39. Moreover, this same motor carrier vehicle will pay 9 cents per mile to comply with the Pennsylvania Axle Tax no matter how many miles fewer than 2,000 it operates in Pennsylvania. For example, if it operates 1,000 miles in the Commonwealth, its increased cost per mile will be as follows:

Step 1: $\frac{2{,}000 - 1{,}000}{2{,}000} \times \$36 \text{ per axle} = \$18 \text{ per axle rebate}$

Step 2: $18 per axle × 5 axles = $90 rebate

Step 3: $180 Axle Tax − $90 rebate = $90 Axle Tax

Step 4: $\frac{\$90 \text{ Axle Tax}}{1{,}000 \text{ miles}} = \$.09$ per mile

Count I—Discrimination against Interstate Commerce

40. The averments of paragraphs 1-39 are incorporated herein as if fully set forth below.

41. 75 Pa. C.S. § 9907(b) states the purpose of the Axle Tax as follows:

> (b) Purpose of tax.—It is the declared policy of the Commonwealth that the money raised by the tax imposed by this chapter be used, to the greatest extent possible, to provide for the creation of jobs and the rehiring of the unemployed in this Commonwealth.

42. The imposition of an Axle Tax which has a financial impact exclusively upon motor carrier vehicles registered outside of Pennsylvania, for the privilege of using the highways of the Commonwealth in interstate commerce, constitutes invidious and unlawful discrimination against interstate commerce insofar as it: (a) imposes burdens on interstate motor carriers operating non-Pennsylvania-based motor carrier vehicles in order to conduct interstate commerce in Pennsylvania that are not shared by motor carriers operating Pennsylvania-based motor carrier vehicles; and (b) generates the funds required to carry out the purely parochial Pennsylvania purposes of the Act exclusively from non-Pennsylvania carriers.

43. The application of the Axle Tax to all motor carrier vehicles operating in the Commonwealth is purely a pretext to disguise facial discrimination against interstate commerce in that the corresponding decrease in Pennsyl-

vania annual registration fees enacted in Act 234 exactly offset the impact of the Axle Tax on motor carrier vehicles based in Pennsylvania.

44. Under Article I, Section 8 of the United States Constitution, discrimination against interstate commerce, such as by conditioning the right of an interstate motor carrier to utilize the highways of Pennsylvania upon the payment of fees or costs not shared by carriers registered in Pennsylvania, is unlawful.

Count II—Burden upon Interstate Commerce

45. The averments of paragraphs 1-44 are incorporated herein as if fully set forth below.

46. The $36-per-axle tax imposed upon non-Pennsylvania-based motor carrier vehicles wishing to utilize the highways of Pennsylvania in order to conduct interstate commerce constitutes an unlawful burden upon interstate motor carriers because:

(a) It is imposed irrespective of the existence of any substantial nexus between the affected interstate motor carriers and the Commonwealth of Pennsylvania;

(b) It is imposed without any regard or concern for the magnitude of the affected motor carriers' business within the Commonwealth of Pennsylvania or any apportionment based upon the relative magnitude of an affected motor carrier's business within Pennsylvania and the carrier's gross volume of business in all states;

(c) It is facially discriminatory between motor carriers operating Pennsylvania-based motor carrier vehicles and motor carriers operating carrier vehicles based in other jurisdictions;

(d) It is not related to the volume, value or nature of the services provided by the Commonwealth of Pennsylvania to any affected interstate motor carrier; and

(e) It is wholly unrelated to the magnitude or nature of any benefit received by or conferred upon any affected interstate motor carrier by the Commonwealth of Pennsylvania or arising from the operations of an affected motor carrier within the Commonwealth of Pennsylvania.

47. For this reason, the $36-per-axle tax imposed by Section 9902 upon each and every interstate motor carrier vehicle registered beyond the borders of the Commonwealth and wishing to utilize the highways of Pennsylvania in interstate commerce constitutes an unlawful burden upon such commerce under Article I, Section 8 of the United States Constitution.

* * * *

WHEREFORE, plaintiffs pray this Honorable Court:

1. To declare that Section 9902 of Title 75 is unlawful, unconstitutional and void insofar as the Axle Tax it imposes upon interstate motor carrier vehicles registered in jurisdictions other than Pennsylvania as a prerequisite to travel upon the highways of this Commonwealth violates the Commerce Clause, the Privileges and Immunities Clause, the Fourteenth Amendment to the United States Constitution, Article VIII, Section 1 of the Pennsylvania Constitution, and 42 U.S.C. § 1983;

2. To enjoin all enforcement of Section 9902 of Title 75 by defendants and persons within their jurisdiction, authority and control, including the enforcement mechanisms provided in Section 2104 of Title 75;

3. To order defendants immediately to refrain from attempting to collect the Axle Tax from interstate motor carriers for the year commencing April 1, 1983;

4. To order the repayment of all sums already collected by defendants pursuant to the Axle Tax forthwith together with interest thereon from the date of collection; and

5. To grant such other relief as may be deemed appropriate, including costs and attorney's fees under 42 U.S.C. § 1988.

/s/ Frank J. Napolitano, Jr.
ARTHUR R. LITTLETON
FRANK J. NAPOLITANO, JR.
2200 The Fidelity Building
123 South Broad Street
Philadelphia, PA 19109
Attorneys for Plaintiffs

Of Counsel:

MORGAN, LEWIS & BOCKIUS

Prior Printer's Nos. 464, 1670 Printer's No. 2248

REPORT OF THE COMMITTEE OF CONFERENCE ON SENATE BILL NO. 457

To the Members of the Senate and House of Representatives:

We, the undersigned, Committee of Conference on the part of the Senate and House of Representatives for the purpose of considering Senate Bill No. 457, entitled: "An act amending Title 75 (vehicles) of the Pennsylvania Consolidated Statutes, further providing for exceptions to vehicle registration and inspection requirements, PROVIDING FOR THE ADMISSIBILITY OF BREATH OR BLOOD TEST REFUSAL AND CHANGING THE PERIOD ALLOWED FOR TEMPORARY PERMITS,"

respectfully submit the following bill as our report:

RICHARD A. TILGHMAN

CLARENCE F. MANBECK

(Committee on the part of the Senate.)

RUDLOPH DININNI

FRED C. NOYE

(Committee on the part of the House of Representatives.)

AN ACT

Amending Title 75 (Vehicles) of the Pennsylvania Consolidated Statutes, deleting a provision prohibiting the deduction of oil company franchise tax in calculating other taxes imposed by the Commonwealth and for the payment of credits, reducing the fee for the issuance of identification markers, providing for the imposition of a new axle tax on certain vehicles and further providing for windshield obstructions.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Sections 1916, 2102, 2104 and 4524 of Title 75, act of November 25, 1970 (P.L. 707, No. 230), known as the Pennsylvania Consolidated Statutes, are amended to read:

§ 1916. Trucks and truck tractors.

(a) General rule.—The annual fee for registration of a truck or truck tractor shall be determined by its registered gross weight or combination weight in pounds according to the following table:

Class	Registered Gross or Combination Weight in Pounds	Fee
1	5,000 or less	$ 39
2	5,001- 7,000	54
3	7,001- 9,000	102
4	9,001-11,000	132
5	11,001-14,000	162
6	14,001-17,000	192
7	17,001-21,000	237
8	21,001-26,000	270
9	26,001-30,000	[315] *243*
10	30,001-33,000	[378] *306*
11	33,001-36,000	[414] *342*
12	36,001-40,000	[438] *366*

Class	Weight in Pounds	Fee
13	40,001-44,000	[465] *357*
14	44,001-48,000	[501] *393*
15	48,001-52,000	[552] *444*
16	52,001-56,000	[588] *480*
17	56,001-60,000	[666] *558*
18	60,001-64,000	[741] *597*
19	64,001-68,000	[.77] *633*
20	68,001-73,280	[834] *690*
21	73,281-76,000	[1065] *885*
22	76,001-78,000	[1089] *909*
23	78,001-78,500	[1101] *921*
24	78,501-79,000	[1113] *933*
25	79,001-80,000	[1125] *945*

* * * *

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

NO. 267 C.D. 1983

CLASS ACTION

AMERICAN TRUCKING ASSOCIATIONS, INC., et al.,
Petitioners

v.

ROBERT K. BLOOM, Secretary of the Department of Revenue, et al.,
Respondents

ANSWER AND NEW MATTER

ANSWER

1-2. ADMITTED only insofar as these paragraphs aver that the axle tax will take effect on April 1, 1983, and insofar as they purport to characterize the nature of the instant action. LEGAL CONCLUSIONS herein require NO RESPONSE.

3. JURISDICTIONAL STATEMENT requiring NO RESPONSE.

4-8. DENIED. Respondents, after reasonable investigation, are without knowledge or information sufficient to form a belief as to the truth of the averments in these paragraphs and proof thereof is demanded.

9. DENIED. Respondents, after reasonable investigation, are without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph and proof thereof is demanded. LEGAL CONCLUSIONS herein require NO RESPONSE.

10. ADMITTED only insofar as it is averred that the individuals named are Pennsylvania citizens, and that Leroy S. Zimmerman and Daniel F. Dunn hold the respective positions stated. DENIED that Robert K. Bloom is Secretary of the Department of Revenue. To the contrary, the Acting Secretary of the Department of Revenue is James I. Scheiner. The remaining averments state LEGAL CONCLUSIONS as to which NO RESPONSE is required.

* * * *

13. ADMITTED only insofar as this paragraph purports to characterize the class sought to be represented.

14-16. DENIED. Respondents, after reasonable investigation, are without knowledge or information sufficient to form a belief as to the truth of these averments, and proof thereof is demanded.

17. ADMITTED.

18. ADMITTED.

19. ADMITTED that Section 9902 imposes an annual tax in the amount of $36 per axle on every truck, truck tractor or combination having a gross weight or registered gross weight in excess of 26,000 pounds operated on the Commonwealth's highways.

20. ADMITTED that 75 Pa. C.S. § 9903 requires that the axle tax be paid to the Department of Revenue at the time a motor carrier applies for vehicle registration or for the issuance of an identification marker or permit pursuant to 75 Pa. C.S. § 2102. All remaining averments state LEGAL CONCLUSIONS as to which NO RESPONSE is required.

21. ADMITTED.

22. ADMITTED that under 75 Pa. C.S. § 9905 the full axle tax applies only to vehicles which travel at least 2,000 miles annually in the Commonwealth.

23. ADMITTED that, for vehicles traveling less than 2,000 miles annually in the Commonwealth, a portion of the full axle tax will be rebated upon application to the Department of Revenue; that rebate applications are to be accompanied by such supporting data as may be required by Department of Revenue regulations; and that upon receipt for such applications, the Commonwealth will issue axle tax rebates in accordance with the following formula:

$$\frac{2{,}000 - \text{actual miles travelled}}{2{,}000} \times \text{axle tax paid} = \text{rebate.}$$

All remaining averments state LEGAL CONCLUSIONS as to which NO RESPONSE is required.

24. ADMITTED.

25. ADMITTED that 75 Pa. C.S. § 9906 provides maximum penalties of a $500 fine and/or 90-day imprisonment for willful failure to pay the axle tax; that there are maximum penalties of a $500 fine and/or 90-day imprisonment for willful violation of the identification marker requirement; and that penalties for willful failure to pay the axle tax are imposed in addition to any penalties which may be imposed for willful failure to obtain and display an identification marker.

26. ADMITTED only as to such employees of the Department of Revenue (not "defendant Bloom") as are designated as special investigators, and who carry identification indicating such capacity. 75 Pa. C.S. § 2104. To the extent that this paragraph refers to any other employees of the Department of Revenue, it is DENIED.

27-28. ADMITTED.

29. DENIED. To the contrary, registration fee reductions do not in every case equal axle tax payments. For example, pursuant to 75 Pa. C.S. § 4941(c), a truck lawfully operating on Pennsylvania highways with a gross

weight greater than 58,400 pounds must have at least 4 axles. The axle tax for a 4-axle truck is $144 (4 x $36). However, the registration fee for a truck with gross weight greater than 58,400 pounds, and less than or equal to 60,000 pounds, has been reduced by only $108. 75 Pa. C.S. § 1916. Further, apportioned-registered vehicles based in Pennsylvania pay only a percentage of the Pennsylvania registration fees (based on the proportion of their total miles which they travel in Pennsylvania), and so benefit from only a percentage of the registration fee reductions; yet these vehicles are subject to the full axle tax (assuming they travel at least 2,000 miles annually in the Commonwealth and have gross weight greater than 26,000 pounds).

30. ADMITTED.

31. ADMITTED only as to a combination with registered gross weight of 80,000 pounds which has five axles. To the extent that petitioners contend that combinations with registered gross weight of 80,000 pounds necessarily have five axles, this paragraph is DENIED. To the contrary, registered gross weight does not determine maximum number of axles.

32. DENIED that an 80,000 pound 5-axle combination is subject to an $1125 registration fee. To the contrary, the registration fee for this type combination is $945, the axle tax $180.

33. DENIED. To the contrary, operators of both Pennsylvania-based and non-Pennsylvania-based trucks, truck tractors, or combinations with gross weight in excess of 26,000 pounds are required to pay the axle tax. The axle tax clearly has a real financial effect upon operators of vehicles based in Pennsylvania.

34. DENIED. Respondents, after reasonable investigation, are without knowledge or information sufficient to form a belief as to the truth of the averment that the

operating cost per mile incurred by Pennsylvania-based motor carrier vehicles during the 1983 registration year will remain constant, and proof thereof is demanded. DENIED that Pennsylvania-based motor carrier vehicles will bear none of the burden of the axle tax. To the contrary, operators of both Pennsylvania-based and non-Pennsylvania-based trucks, truck tractors, or combinations with gross weight in excess of 26,000 pounds are required to pay the axle tax. Any LEGAL CONCLUSIONS intended to be derived herefrom require NO RESPONSE.

35. DENIED. To the contrary, operators of both Pennsylvania-based and non-Pennsylvania-based trucks, truck tractors, or combinations with gross weight in excess of 26,000 pounds are required to pay the axle tax. Respondents are without knowledge or information sufficient to form a belief as to the truth of the averment that the "burden" of the axle tax is "very great", and proof thereof is demanded. Any LEGAL CONCLUSIONS intended to be derived herefrom require NO RESPONSE.

36-37. DENIED. The axle tax for a five-axle motor carrier vehicle will in fact be $180; however, imposition of the axle tax will not necessarily increase net "operating costs" by $180. Axle tax revenues will be used for bridge rehabilitation, replacement and removal projects on state, county and municipal highways. 75 Pa.C.S. §§ 9907(a), 9908. These bridge projects will benefit the operators of vehicles subject to the axle tax.

Proof of the averments in these paragraphs is demanded.

38. DENIED. The meaning of this paragraph is unclear; respondents cannot answer it absent clarification.

39. DENIED. Imposition of the axle tax will not necessarily increase net costs per mile by 9¢. *See*, ¶¶ 36-

37, *supra*. Proof of the averments in this paragraph is demanded.

40. The answers to paragraphs 1-39 are incorporated herein as if fully set forth.

41. ADMITTED that this paragraph quotes accurately a portion of 75 Pa.C.S. § 9907(b). By way of further response, the remainder of § 9907(b) states as follows:

> In order to reach this goal, firms with Pennsylvania-based facilities shall be actively solicited to make bids on contracts to furnish products and materials, including, but not limited to, steel and steel products, *to be used in the projects funded through the Highway Bridge Improvement Restricted Account.*

(Emphasis added.) Any LEGAL CONCLUSIONS intended to be derived herefrom require NO RESPONSE.

42. DENIED. States LEGAL CONCLUSIONS as to which NO RESPONSE is required.

43. ADMITTED only insofar as it is averred that the axle tax applies to all motor carrier vehicles operating in the Commonwealth, and that Act 234 decreased certain annual registration fees. DENIED that the axle tax has no impact on motor carrier vehicles based in Pennsylvania. To the contrary, operators of both Pennsylvania-based and non-Pennsylvania-based trucks, truck tractors, or combinations with gross weight in excess of 26,000 pounds are required to pay the axle tax. Further DENIED that Act 234's registration fee reductions equal axle tax payments in all cases. *See*, ¶¶ 29, 31, *supra*. All remaining averments state LEGAL CONCLUSIONS as to which NO RESPONSE is required.

44. DENIED. States LEGAL CONCLUSIONS as to which NO RESPONSE is required.

45. The answers to paragraphs 1-44 are incorporated herein as if fully set forth.

46-47. DENIED. State LEGAL CONCLUSIONS as to which NO RESPONSE is required.

NEW MATTER

57. The axle tax is imposed equally upon Pennsylvania-registered and non-Pennsylvaia-registered vehicles which are subject to the Axle Tax for Highway Bridge Improvement Act.

58. The axle tax applies only to trucks, truck tractors, or combinations with gross-weight greater than 26,000 pounds, which travel on Pennsylvania highways.

59. The full axle tax applies only to vehicles which travel at least 2,000 miles annually in the Commonwealth.

60. The axle tax is paid exclusively into the Highway Bridge Improvement Restricted Account within the Motor License Fund. 75 Pa. C.S. § 9907(a).

61. The Highway Bridge Improvement Restricted Account will be used for bridge rehabilitation, replacement and removal projects on state, county and municipal highways. 75 Pa. C.S. § 9908.

62. Both Pennsylvania-based and non-Pennsylvania-based vehicles using Pennsylvania highways will benefit from these bridge rehabilitation, replacement and removal projects.

63. The weight at which a given Pennsylvania-based vehicle or combination registers, pursuant to 75 Pa.C.S. § 1916, does not determine the maximum number of axles which that vehicle or combination will have.

64. Pennsylvania is a party to the International Registration Plan. (IRP).

65. Vehicles based in IRP-member states which travel in Pennsylvania pay to the Commonwealth an apportioned registration fee based on the following formula:

$$\frac{\text{miles travelled in PA.}}{\text{total miles travelled}} \times \text{PA. registration fee} = \text{apportioned registration fee}$$

66. Motor carriers which operate on Pennsylvania highways vehicles based in IRP-member states pay lower apportioned registration fees to the Commonwealth as a result of Act 234's registration fee reductions.

67. Motor carriers operating apportioned-registered vehicles based in Pennsylvania pay only a percentage of Pennsylvania registration fees for those vehicles, according to the formula set out in ¶ 65, *supra*.

68. Operators of apportioned-registered vehicles based in Pennsylvania therefore benefit from only a percentage of Act 234's registration fee reductions.

69. Apportioned-registered vehicles based in Pennsylvania are, however, subject to the full axle tax (assuming they travel at least 2,000 miles annually in the Commonwealth and have gross weight greater than 26,000 pounds).

70. The axle tax imposed on a given Pennsylvania-based vehicle or combination may exceed in amount the registration fee reduction which applies to that vehicle or combination.

71. Corporate petitioners lack standing to assert a claim under the Privileges and Immunities Clause.

WHEREFORE, respondents respectfully request that the instant complaint be dismissed with prejudice.

Respectfully submitted,

LEROY S. ZIMMERMAN
Attorney General

By: /s/ Maura A. Johnston
MAURA A. JOHNSTON
Deputy Attorney General

ALLEN MENGEL
Assistant Counsel
Department of Revenue

MICHAEL MCCANEY
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Date: March 1, 1983

IN THE COMMONWEALTH COURT
OF PENNSYLVANIA

No. 267 C.D. 1983

CLASS ACTION

AMERICAN TRUCKING ASSOCIATIONS, INC., *et al.*,
Petitioners,

v.

ROBERT K. BLOOM, Secretary of the
Department of Revenue, *et al.*,
Respondents.

PETITIONERS' REPLY TO RESPONDENTS' NEW MATTER

Petitioners, American Trucking Associations, Inc., et al., reply to respondents' New Matter, in accordance with the paragraph numbers thereof, as follows:

57. Denied as stated. It is admitted that Section 9902 purports to impose the Axle Tax equally upon all vehicles regardless of their registration jurisdiction. However, Section 1916 negates the imposition of the Axle Tax upon Pennsylvania-based vehicles. As demonstrated in paragraphs 27-39 of the Petition for Review, the burden of the Axle Tax imposed upon interstate motor carriers operating non-Pennsylvania-based motor carrier vehicles is not shared by motor carriers operating Pennsylvania-based motor carrier vehicles.

58-60. Admitted.

61. Admitted in part and denied in part. It is admitted that 75 Pa. C.S. § 9908 appropriates funds from the Highway Bridge Improvement Restricted Account for

certain ennumerated purposes. However, respondents' interpretation of the provisions of this section is denied in that it constitutes a conclusion of law to which no response is required.

62. Denied as stated. It is admitted that vehicles registered in all jurisdictions may benefit from the bridge rehabilitation, replacement and removal projects of Section 9908. However, Pennsylvania-based and non-Pennsylvania-based vehicles will not share that benefit equally. On average, non-Pennsylvania-based motor carrier vehicles travel a much smaller percentage of their miles on the roads of the Commonwealth. In addition, almost half of the bridges targeted for improvement under Section 9908 are located in rural areas and on little-used roads which receive no federal highway aid funds.

63. Denied as stated. While it is true that the weight class of any vehicle or combination does not limit the maximum number of axles which that vehicle or combination will have, the minimum number of axles and the registration weight of motor carrier vehicles are directly related. The reductions in Section 1916 registration fee amounts effected by Act 234 reflect the average number of axles that a typical vehicle in any given weight class can reasonably be expected to have. That is, the typical motor carrier vehicles registering for a maximum weight of 26,001-40,000 pounds must have two axles; motor carrier vehicles registering for a maximum weight of 40,001-60,000 pounds must have three axles; motor carrier vehicles registering for a maximum weight of 60,001-73,280 pounds must have four axles; and motor carrier vehicles registering for maximum weights in excess of 73,281 typically have five axles.

64-68. Admitted in part and denied in part. It is admitted that Pennsylvania is now a member jurisdiction of the IRP. However, respondents' interpretations of the provisions of the IRP are denied. The IRP, being a writ-

ten agreement among the various member jurisdictions, speaks for itself. By way of further answer, the participation of Pennsylvania in the IRP is an executive decision—not law—and it is therefore subject to change by the Pennsylvania Department of Transportation at any time without consulting the legislature. Such administrative regulations are ineffective to cure a patently parochial statute and irrelevant to its constitutionality.

69. Denied as stated. Motor carrier vehicles based in all jurisditcions which are in excess of 26,000 pounds gross vehicle weight and which travel at least 2,000 miles in the Commonwealth are subject to the payment of the full Axle Tax. However, Pennsylvania-based motor carrier vehicles, regardless of whether they apportion registration, are relieved of some portion of the burden of the Axle Tax.

70. Denied as stated. While the scenario alleged in this paragraph is possible, for the reasons stated in response to the allegations of paragraph 63 above, on average the registration fee reduction of Act 234 will exactly offset the Axle Tax imposed upon Pennsylvania-based motor carrier vehicles.

71. Denied. Petitioners are advised that the allegation of this paragraph constitutes conclusions of law to which no response is required.

/s/ F. J. Napolitano, Jr.
ARTHUR R. LITTLETON
FRANK J. NAPOLITANO, JR.

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Attorneys for Petitioners

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IN THE COMMONWEALTH COURT
OF PENNSYLVANIA

No. 267 C.D. 1983

AMERICAN TRUCKING ASSOCIATIONS, INC., *et al.*,
Petitioners

vs.

ROBERT K. BLOOM, Secretary of the
Department of Revenue, *et al.*,
Respondents

STIPULATION

Petitioners commenced this action to have Section 9902 of the Axle Tax for Highway Bridge Improvement Act, 75 Pa.C.S. §§ 9901-9909 ("Axle Tax"), declared unconstitutional and all enforcement of it enjoined.

Section 9902 requires that motor carriers pay an annual tax in the amount of $36 per axle on certain motor carrier vehicles operated into, from, or through Pennsylvania. 75 Pa.C.S. § 9903 requires that this tax be paid at the time of application for registration, for Pennsylvania-based vehicles (June 1), or, for non-Pennsylvania-based vehicles, at the time of application for the identification marker or permit required by 75 Pa.C.S. § 2102 (April 1). Affected motor carriers operating non-Pennsylvania-based vehicles within the Commonwealth are presently in the process of paying the Axle Tax for the year beginning April 1, 1983.

In an effort to have the Court establish an escrow or similar type arrangement to safeguard the Axle Tax payments being made by affected motor carriers pending the outcome of this suit, petitioners filed a Motion for Special Injunction subsequent to filing their Petition for Review.

To avoid the time and expense of a hearing on the Motion, however, petitioners and respondents have

reached the following Stipulation concerning the disposition of the payments in question:

1. Respondents agree that, if petitioners prevail upon the merits of their Petition for Review, pursuant to 72 P.S. § 503, all affected motor carriers will be entitled to receive a refund of Axle Tax payments for the year beginning April 1, 1983. Further, respondents agree that the motor carriers will receive a refund of such payments under the terms set forth below.

2. Within ninety (90) days after a final decision on the merits in which Section 9902 shall have been declared unconstitutional or its enforcement enjoined and all appeals have been exhausted or abandoned, respondents shall refund all Axle Tax payments for the year beginning April 1, 1983. If, after (80) days from the date of the final decision, respondents reasonably believe for reasons not foreseeable at the time of this Stipulation that they will not be able to complete all refunds within the ninety (90) day period, they shall have the right to apply to the Commonwealth Court for an appropriate modification of this paragraph.

3. Respondents agree that, in the event refunds are due, they will identify and transmit the correct amount of refund to each affected motor carrier. Respondents further agree that no affected motor carrier will be required to proceed before the Board of Finance and Revenue or otherwise come forward with any type of proof in order to be entitled to such refund.

4. Respondents further agree that, in the event refunds are made, they will provide to Douglas Hughes, in care of American Trucking Associations, Inc., a listing of the motor carriers to which refunds have been issued. This listing will indicate the dollar amount of the refund issued to each motor carrier.

5. If for any reason a motor carrier entitled to receive an Axle Tax refund for the year beginning April

1, 1983 does not receive a refund in the correct amount from respondents pursuant to paragraph 3, the motor carrier, upon submitting reasonable proof of such entitlement in writing addressed to Maura A. Johnston, Esquire, Office of Attorney General, 15th Floor, Strawberry Square, Harrisburg, PA 17120, shall forthwith receive the proper refund. Notwithstanding the alternate procedure described in this paragraph, it is the intent of this Stipulation that refunds will be made under the procedure set forth in paragraph 3.

6. Petitioners and respondents agree to defer the question of whether affected motor carriers are entitled to receive interest upon any payments refunded to them. Affected motor carriers shall recover from respondents such interest upon the amounts refunded to them as the law may provide at the time the refunds are made.

7. Nothing in this Stipulation shall be construed to relieve motor carriers from complying with the requirements of Section 9902 or from payment of the Axle Tax, as provided for in the Axle Tax for Highway Bridge Improvement Act, 75 Pa.C.S. §§ 9901-9909.

8. This Stipulation relates solely to a procedure for refunds if petitioners ultimately prevail on their claims and neither petitioners nor respondents shall, by virtue of having entered into this Stipulation, be deemed to have waived any claim, defense or position regarding the merits of this action.

9. In consideration of the covenants and agreements above, petitioners withdraw the Motion for Special Injunction previously filed.

Attorney for Petitioners

/s/ Maura A. Johnston
Attorney for Respondents

Date: February 9, 1983

IN THE COMMONWEALTH COURT
OF PENNSYLVANIA

No. 267 C.D. 1983

CIVIL ACTION

AMERICAN TRUCKING ASSOCIATIONS, INC., *et al.*,
Petitioners,

v.

ROBERT K. BLOOM, Secretary of the
Department of Revenue, *et al.*,
Respondents.

ORDER FOR CLASS CERTIFICATION PURSUANT TO PA. R. CIV. P. 1710 AND 1711

AND NOW, this 12th day of December, 1983, upon consideration of petitioners' motion for class certification and respondents' answer thereto, it is

ORDERED AND DECREED that:

1. This action shall be certified to proceed as a class action.

2. The class to be represented by the named petitioners in connection with their Petition for Review is certified to consist of all interstate carriers who own motor carrier vehicles which are registered outside of Pennsylvania and who are now or may in the future become subject to the Axle Tax of Section 9902 of the Vehicle Code on account of their operation of such motor carrier vehicles in Pennsylvania.

3. The subclass to be represented by the named petitioners in connection with their Petition for Review is

certified to consist of all interstate carriers who own motor carrier vehicles which are registered in any of the states or provinces which are not member jurisdictions of the International Registration Plan and who are now or may in the future become subject to the Axle Tax of Section 9902 of the Vehicle Code on account of their operation of such motor carrier vehicles in Pennsylvania.

4. Every member of the class and/or subclass shall be included in the class and/or subclass unless such member files of record a written election to be excluded from the class and/or subclass within thirty (30) days of publication of notice of this action pursuant to Pa. R. Civ. P. 1712.

/s/ Williams, Jr.

AFFIDAVIT

[In Support of Respondents' Motion for Summary Judgment]

I, ARLEE T. RENO, state that the following facts are true and correct to my personal knowledge.

1. I am employed by System Design Concepts, Inc. (Sydec), a leading expert consulting firm in the area of highway taxation and finance. I hold the position of Executive Vice President. I have held this position since 1981 and have been employed by System Design Concepts, Inc., since June 1970.

2. During the last fourteen years I have conducted numerous studies and analyses of highway taxation and finance including in-depth studies in relation to interstate and intrastate trucking. I have conducted detailed analyses of such topics for agencies such as the National Academy of Sciences, the Federal Highway Administration, and the American Association of State Highway Officials. A resume of my experience is attached as Appendix R-1.[1]

3. All states, including Pennsylvania, require trucks based in their state to register and pay a fee for registration.[2] Pennsylvania's registration fees are based upon gross weight and there are twenty-five weight classes under which a truck may register. The maximum allowed weight for registration is 80,000 pounds.

4. Trucks are required to be duly registered in either Pennsylvania or another state in order to travel in Pennsylvania. Pennsylvania has state-by-state reci-

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[1] All appendices referred to in, and attached to, this Affidavit are incorporated in the Affidavit as if fully set forth. This includes all exhibits within those appendices. Unless otherwise stated, the facts set forth in those appendices are known to me personally.

[2] A summary of the types of highway user fees imposed by states is attached as Appendix R-2.

procity agreements with twenty-one states and the District of Columbia to allow duly registered trucks from those jurisdictions to use Pennsylvania's roads without payment of Pennsylvania's registration fees. Data from the Commonwealth of Pennsylvania Department of Revenue indicate that the trucks of carriers located in states with which Pennsylvania has reciprocity agreements traveled over 900 million vehicle miles in Pennsylvania.[1]

5. Pennsylvania belongs to a multi-state agreement called the International Registration Plan (IRP), which includes twenty-seven other states plus the province of Alberta, Canada. Trucks registering in any of these states pay an apportioned registration fee to each of the other states in the IRP based upon the proportion of miles of travel in those states. The mileage and fees due from each carrier are calculated on the basis of the carrier's total fleet rather than for each individual truck. Data from the Commonwealth of Pennsylvania Department of Revenue indicate that the trucks of carriers located in other IRP member states traveled over 500 million vehicle miles in Pennsylvania.[2]

6. None of the states bordering Pennsylvania (New Jersey, New York, Ohio, West Virginia, Maryland, and Delaware) belongs to the IRP. Therefore, if a truck is registered in any of these bordering states, none of its registration fees accrue to Pennsylvania no matter how many miles are traveled in Pennsylvania. The same is true for trucks registered in those other jurisdictions with which Pennsylvania has reciprocity agreements for interstate travel.

7. Pennsylvania and thirty-nine other states collect fuel usage taxes, whereby carriers engaged in interstate

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[1] See Affidavit of Michele Gross ("Gross Affidavit"), paragraph 6.

[2] Gross Affidavit, paragraph 6.

travel are required to pay state taxes on fuel consumed within the state, even though the fuel may have been put into a truck's fuel tanks outside the state boundaries. These fuel taxes are collected on this basis because trucks engaged in interstate commerce can travel long distances without refueling, and thus could avoid buying fuel in a particular state if they so desired. These taxes are collected from all carriers no matter where registered.

8. Interstate carriers operating in Pennsylvania report their miles traveled in Pennsylvania and their total miles traveled so that the fuel consumed by the carrier can be apportioned to Pennsylvania and the other states in which the carrier traveled. The carrier then pays each state the fuel taxes due on the fuel consumed within that state at the state's applicable rate of taxation for the fuel.

9. Some states also collect usage fees based upon a carrier's miles of travel within the state and the weight of the vehicle(s) doing the travel. The types of usage fees levied by particular states include fees based upon registered weight and distance, fees based upon loaded weight and distance, and fees based upon number of axles and distance. These taxes, like Pennsylvania's axle tax, are collected from all carriers no matter where registered.

10. Some states have levied "retaliatory" taxes on trucks registered in other states which have usage or other types of fees. A retaliatory tax is usually a mirror image tax collected only on vehicles registered in the state being retaliated against. Eight states currently impose, or have stated an intention to retaliate against Pennsylvania's axle tax.

11. As of July 1984, Pennsylvania's registration fees for the large trucks engaged in interstate travel were higher than those of the six bordering states and higher than the national average.

12. On average, tractor-semitrailers registered at 78,000 pounds in the twenty-one states with which Pennsylvania has reciprocity paid registration fees of $688.60 as of February, 1984, according to the American Trucking Associations. This was $267.40 less in registration fees than the same tractor-semitrailer would pay in Pennsylvania. Thus, those tractor-semitrailers registered in Pennsylvania pay $267.40 more in total fees to operate in Pennsylvania than the average for the same tractor-semitrailer in reciprocity states. All trucks registered in reciprocity states pay the Pennsylvania axle tax on the same basis as similar trucks registered in Pennsylvania.[1]

    For trucks registered in member states of the International Registration Plan, proportional registration fees are paid to each member state based upon the percentage of miles in each state. IRP members, including Pennsylvania, thus share registration fees on an equitable basis. All IRP registered trucks which travel in Pennsylvania pay the Pennsylvania axle tax on an equal basis, whether registered in Pennsylvania or in other IRP member states.

13. After Pennsylvania raised its registration fees in 1980, the proportion of truck-tractors registered in Pennsylvania compared to the total in Pennsylvania and the surrounding states dropped substantially according to the Federal Highway Administration (FHWA).[2] The proportion of truck-tractors registered in Pennsylvania compared to total truck-tractor registrations in Pennsylvania and the six surrounding states was 28 percent in both 1979 and 1980, but dropped to 22 percent in 1981.

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[1] Appendix R-3 provides a comparison of fees for Pennsylvania trucks compared to fees for trucks registered in reciprocity states.

[2] Appendix R-4 provides a summary of the impacts of registration fee increases on Pennsylvania's registrations of heavy trucks.

14. While Pennsylvania's registration figures for 1984 are not complete, preliminary data do not show an increase for heavy trucks between 1983 and 1984. Perhaps because of the retaliation of several states against the Pennsylvania axle tax, Pennsylvania's registrations may not be as high.

15. Another reason that Pennsylvania's registrations of heavy truck-tractors may not increase after 1983 is that Pennsylvania's registration fees remain higher than those of the six bordering states. The registration fees in July 1984 for 80,000 pound tractor-semitrailer combinations were $972 in Pennsylvania, and ranged from $404 to $860 in the bordering states. Prior to the 1983 decrease in registration fees, Pennsylvania's registration fee for an 80,000 pound tractor-semitrailer was $292 to $748 higher than the registration fees for a similar tractor-semitrailer in the six surrounding states.

16. An 80,000 pound tractor-semitrailer registered in Pennsylvania and traveling in Pennsylvania and its six bordering states would pay a higher total registration fee plus axle tax than the same tractor-semitrailer would if registered in any of the border states and traveling the same exact miles and routes in these states. In five of the six bordering states, it is cheaper to pay that state's registration fee plus the Pennsylvania axle tax than to pay the Pennsylvania registration fee alone.

17. The historical evidence on the relative shift in registrations of truck-tractors from Pennsylvania to other states after Pennsylvania's registration fees were raised confirms the expectation that a further increase in registration fees would cause trucks to register in states other than Pennsylavnia. These trucks, by shifting their registrations to states with which Pennsylvania has reciprocity agreements,

would pay lower registration fees, none of which would accrue to Pennsylvania to repair and maintain the roads.

18. The existence of a large number of carriers who are able to shift their registrations from Pennsylvania to neighboring states or other states means that registration fees themselves cannot be relied upon to reach all trucks making substantial use of Pennsylvania's highways and bridges.

19. All trucks operating in Pennsylvania, whether registered in Pennsylvania or out-of-state, pay the same fuel usage tax based upon gallons of fuel consumed in Pennsylvania. Therefore, a truck which pays less in registration fees for the same travel in Pennsylvania also pays less in total fees (registration plus fuel taxes) for the same travel in Pennsylvania.

20. Trucks engaged in interstate travel in Pennsylvania travel extensive miles on primary, secondary, and local routes in addition to their travel on the Interstate highways. An estimate prepared by Sydec for the U.S. DOT's Truck Size and Weight Study indicated that only 36 percent of travel by tractor-semitrailer trucks in Pennsylvania was on the Interstate System, while 64 percent was on the principal arterial, collector, and local roads. In addition, trucks engaged in interstate travel need access to origins and destinations on principal arterials, collector, and local roads, even in instances in which most of their travel is on Interstate highways.

21. All states including Pennsylvania have a designated national network of routes available to vehicles (large trucks of the maximum allowed dimensions and weight) authorized by the provisions of the Surface Transportation Assistance Act of 1982 (STAA) (Public Law 97-424, 96 Stat. 2097, as amended by Public Law 98-17, 97 Stat. 59). Pennsylvania has

44 major routes on this network and has established a substantial number of access routes to and from this network.[1] According to Chapter I of Title 23, Code of Federal Regulations, Part 658, "all States must allow vehicles with dimensions authorized by the STAA reasonable access between the National Network described in the regulation and terminals, and facilities for food, fuel, repairs, and rest." Appendix R-5 documents the use of, and necessity for the use of principal primary, secondary, and local routes by trucks engaged in interstate commerce.

/s/ Arlee T. Reno
ARLEE T. RENO

Commonwealth of Massachusetts
Barnstable, ss.

Sworn to and subscribed before
me this 20th day of August, 1984.

/s/ Gail L. Emerald
GAIL L. EMERALD
Notary Public

My commission expires: May 21, 1987

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[1] See also Affidavit of Warren Kone, paragraphs 3-5.

APPENDIX R-2

TYPES OF HIGHWAY USER FEES

Registration Fees

All states collect fees for the registration of trucks based within their state. Registration is required in each state for interstate truck operators who wish to operate within that state unless there is an agreement between the respective states where the vehicle is registered and the state in which it wishes to operate, or unless a temporary permit is acquired for a fee.

Registration fees and the basis on which they are collected vary widely from state to state. A majority of the states rely upon the declared gross weight of the truck or combination as the basis for registration, while eight U.S. jurisdictions (including the District of Columbia) set fees on the basis of unladen weight. A few have more complicated fee structures that include age, number of axles, or load capacity. Fee schedules vary enormously among the states, with no common basis for either weight groupings or the rates applied to the vehicles of a particular weight.

The two types of most commonly used mechanisms which allow interstate operations of trucks are bilateral agreements between two states or multi-state agreements open to all states who wish to join. The simplest form of agreement between the states is reciprocity: if a vehicle is registered properly in one state, it is allowed to use the highways of another state without the payment of an additional fee and without preparing a report which enables the states to split the registration fee on a proportional basis. Another procedure which involves a low level of cooperation among the states is the issuance of temporary trip permits by the state which the operator is traversing. No involvement by the base state is neces-

sary for the other state to issue the temporary trip permit. Both reciprocity and the use of permits allow the carrier to avoid paying duplicative full registration fees to each of the states in which it operates.

Pennsylvania grants full reciprocity for registration fee purposes to vehicles registered in:

Alaska
California
Connecticut
*Delaware
District of Columbia
Florida
Georgia
Indiana
Maine
*Maryland
Massachusetts
Nevada
New Hampshire
*New Jersey
New Mexico
*New York
*Ohio
Rhode Island
South Carolina
Vermont
Washington
*West Virginia
British Columbia (Canada)
Manitoba (Canada)
New Brunswick (Canada)
Nova Scotia (Canada)
Ontario (Canada)
Quebec (Canada)

*Denotes bordering state

Thus, Pennsylnavia has reciprocity with all of its bordering states. The implication of this for Pennsylvania's revenues from registration fees is that if a Penn-

sylvania-based carrier moves its base and its registrations to one of these bordering states, the carrier would then pay registration fees only to that bordering state. This would be true even if the carrier continued to travel the same miles in Pennsylvania, and the same miles in the bordering state, as it did before changing its base state of registration. Carriers based in states governed by reciprocity do not report their mileage in Pennsylvania or their total mileage in all states for registration purposes.

The disadvantage of reciprocity from the point of view of the state granting reciprocity is that more truck travel by out-of-state carriers may occur on its roads than is reflected in the total registration fees it collects from carriers registered in the state. This is particularly the case for large sparsely populated states or states such as Pennsylvania along major travel corridors, where the level of travel by vehicles from out of state may be very high.

Permits

Temporary permits may also be used by a state to allow travel by trucks which would otherwise not be allowed to enter the state. The issuance of temporary permits requires a flexible permit issuing process if it is to be convenient for the carriers, many of whom may not be able to plan their travel very far in advance.

Multi-State Registration Agreements

Three major mechanisms provide for multi-state agreements with regard to registrations: the International Registration Plan (IRP), the Uniform Vehicle Registration Proration and Reciprocity Agreement (UPRA), and the Multistate Reciprocity Agreement (MRA).

These multi-state agreements have evolved over time as interstate truck travel became more complex and more

national in scope. At first, states had no agreements, and later, state-by-state reciprocity agreements were adopted. The Multistate Reciprocity Agreement was begun in 1948, the Uniform Vehicle Registration Proration and Reciprocity Agreement was begun in 1956, and the International Registration Plan was begun in 1973. Each represented a successively higher degree of cooperation among the member states and member Canadian provinces.

International Registration Plan

The International Registration Plan (IRP), of which Pennsylvania and twenty-seven other states are members, is now the most widely used cooperative mechanism for collecting registration revenues from interstate motor carriers and distributing them among the member states and Canadian provinces. When a jurisdiction joins IRP, the IRP agreement supersedes previous bi-state and multi-state agreements covering the same topics. The distinguishing features of the IRP are base state registration and auditing, one license plate, and one Cab Card showing IRP registration.

Under the IRP, proportional registration fees are paid to each IRP state based upon the percentage of miles driven in each state by each motor carrier. Fees due each state are sometimes calculated by the base state and sometimes by the state where they are due, depending on the complexity of the registration schedule in the state where fees are due.

IRP forms include:

- Original Application Schedule A, listing vehicle and ownership information (license plate number, VIN, weight, fuel type, price, owner, etc.)
- Original Mileage Schedule Recap Sheet, listing mileage and percent of mileage in each jurisdiction (50 states,

District of Columbia, 12 Canadian provinces, and Mexico), and identifying type of operation

- Supplemental Application Schedule C (additions and deletions to Schedule A)
- Supplemental Recap Sheet (for each jurisdiction)
- Registration Weight Schedule E (weight apportioned in each jurisdiction for each vehicle)
- Uniform Transmittal Notice Schedule F (transmits copies of applications from base state to other states)
- Declaration of Estimated Miles Schedule G (estimate of first year miles by state for new routes)

The operator receives an IRP apportioned Cab Card showing the weight, base state, and other states in which the vehicle mileage has been apportioned. The Cab Card is the IRP identification to be carried on the vehicle. The IRP requires reporting of mileage traveled by registered weight and state for the purpose of calculating registration fees due to each jurisdiction. The IRP provides that an acceptable source document to verify fleet mileage is some type of "Individual Vehicle Mileage Record" (IVMR), which shows trip-by-trip mileage by route and jurisdiction for each vehicle in the operator's fleet. An audit might review a sample of some months of an operator's IVMRs in order to verify the total mileage and the distributed mileage reported to the IRP base state.

The IVMRs thus provide the basic information necessary for the auditing of an IRP registration, motor carrier fuel use taxes, or a weight-distance tax, except that they do not include information on trips covered by trip permits, nor, of course, does the IRP cover all states. The operator is assessed registration fees for 100 percent of mileage. In most IRP states including Pennsylvania, the base state registration fee is applied to that portion of the mileage accumulated in non-IRP states.

Uniform Vehicle Registration Proration and Reciprocity Agreement

The UPRA is a predecessor agreement which has been superseded by IRP in most jurisdictions. UPRA applies among the states of New Mexico, Nevada, California, and Washington, and the Province of British Columbia. UPRA also applies between these jurisdictions and the 17 jurisdictions which were members of UPRA and have since joined IRP (Alaska, Alberta, Arizona, Colorado, Idaho, Illinois, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, North Dakota, Oregon, South Dakota, Utah, and Wyoming). The distinguishing characteristic of UPRA is that it requires registration in each state, although fees are prorated based upon mileage. A base license plate is required and additional stickers from other states are affixed to a plate. Pennsylvania is not a party to this agreement.

Multistate Reciprocity Agreement

The Multistate Reciprocity Agreement (MRA) was begun in 1948. Under this agreement, registration revenues are collected by the base state, and privileges for interstate travel are granted by other states which belong to the agreement. The base state is defined as the state where the vehicle "is most frequently dispatched, garaged, serviced, maintenanced, operated, or otherwise controlled." If the bases are in more than one state, the MRA allows registrations to be distributed among the base states in accord with mileage accrued.

The MRA is subscribed to by Alabama, Florida, Georgia, Indiana, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, New Jersey, North Carolina, North Dakota, South Carolina, Tennessee, Virginia, and West Virginia, and applies to any bilateral state-by-state reciprocity agreement not superseded by the IRP. (IRP mem-

bers from among the MRA members include the states of Alabama, Kentucky, Louisiana, Mississippi, Missouri, North Carolina, North Dakota, Tennessee, and Virginia). Pennsylvania is not a party to this agreement.

The basic reason why many states chose not to participate in MRA was that those states had small base vehicle populations relative to the miles traveled by motor carriers and therefore believed that they would not receive sufficient fees as the base state to make up for the use of their highways by out-of-state trucks.

Fuel Taxes and Carrier Fuel Use Taxes

All states have some form of tax on diesel fuel and gasoline or a substitute fee or usage type of tax which replaces the revenues that the diesel fuel or gasoline tax would otherwise generate.

Because large trucks have the capability of traveling for a substantial range without refueling, it is easily possible for truck operators to traverse a state without buying fuel within that state and thereby pay fuel taxes at the pump. Forty states, including Pennsylvania, have therefore instituted motor carrier fuel use taxes under which the truck operator is responsible for reporting on the mileage traveled, calculating the fuel consumed within the state, and paying the taxes calculated as due on fuel consumed even though a different amount of fuel than consumed may have been purchased in the state. The fuel use taxes due are calculated based on each carrier's fleet miles of travel and fleet average fuel consumption, rather than for individual vehicles.

Ten states and the District of Columbia do not have motor carrier fuel use tax laws which require the carrier to report mileage and fuel consumed within their states. These include Alaska and Hawaii, for which the issue is moot due to their geographic separation from the other states, and Rhode Island and the District of Columbia,

whose size is so small that insignificant levels of revenue could be expected from attempting to collect a tax on fuel consumed. Florida also has no mechanism for reporting on mileage for fuel use tax purposes. All fuel sold in these jurisdictions is subject to a purchase tax.

Motor carriers operating in Oregon, Idaho, and Wyoming pay a tax based on weight and mileage instead of a fuel tax. Ohio substitutes an axle-mile tax for the fuel tax for carriers with over three axles. Wisconsin requires sufficient purchases within the State to cover the operator's use of fuel in Wisconsin.

The forty states which tax motor carriers' use of fuel follow a multitude of administrative procedures, and the state laws differ in terms of which fuels and vehicles are subject to the tax, what scope of operation is covered, filing periods and due dates for reporting, and policies towards crediting and refunding overpayments.

For fuel use tax purposes, carriers operating vehicles of over 17,000 lbs. gross registered weight report to Pennsylvania their mileage traveled in Pennsylvania and their total mileage.[1] Exhibit R-1 gives a breakdown of miles traveled by carriers in Pennsylvania and total mileage traveled, for each state in which carriers are located. As can be seen, substantial amounts of travel occur on Pennsylvania highways by carriers located out-of-state.

Usage Taxes

Usage taxes are those related to weight or axles and distance, and include a weight-distance tax (registered weight times miles traveled) a ton-mile tax (loaded weight times miles traveled for each trip) and an axle-mile tax (axles times miles traveled). One state (Kentucky) has a flat mileage tax which applies to vehicles over 59,999 pounds gross registered weight.

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[1] This reporting requirement is waived for all Pennsylvania-registered vehicles which travel 90 percent or more of their mileage in the Commonwealth (see Sload Affidavit, paragraph 6).

EXHIBIT R-1

MILES OF TRAVEL IN PENNSYLVANIA AND ALL MILES OF TRAVEL BY CARRIERS LOCATED IN THE VARIOUS STATES

Account State	PA Miles	All Miles	% PA Miles of All Miles
Alabama	17,728,029	472,819,172	3.75
Arizona	1,856,670	66,629,550	2.79
Arkansas	25,459,215	604,314,885	4.21
California	17,663,972	335,007,712	5.27
Colorado	7,563,538	182,715,471	4.14
Connecticut	11,352,248	131,817,223	8.61
Delaware	34,112,419	252,513,947	13.51
Washington, D.C.	88,673	4,008,054	2.21
Florida	114,370,666	1,410,240,605	8.11
Georgia	19,461,744	708,239,439	2.75
Idaho	1,740,179	41,322,892	4.21
Illinois	53,777,556	845,249,824	6.36
Indiana	84,175,354	1,154,859,591	7.29
Iowa	29,011,391	612,966,976	4.73
Kansas	49,336,184	739,935,326	6.67
Kentucky	11,151,078	212,729,906	5.24
Louisiana	613,022	64,159,836	0.96
Maine	4,709,593	100,687,391	4.68
Maryland	82,501,062	479,167,650	17.22
Massachusetts	20,992,296	221,016,952	9.50
Michigan	80,120,902	904,022,803	8.86
Minnesota	37,908,410	693,954,375	5.46
Mississippi	3,307,325	207,253,328	1.60
Missouri	46,839,889	882,884,447	5.31
Montana	1,013,458	50,960,429	1.99
Nebraska	20,078,908	388,760,104	5.16
Nevada	26,200	3,897,091	0.67
New Hampshire	2,018,346	38,687,370	5.22
New Jersey	149,413,069	967,427,918	15.44
New Mexico	243,754	5,084,438	4.79
New York	133,697,269	796,744,079	16.78
North Carolina	83,131,764	1,369,758,894	6.07
North Dakota	435,744	20,953,897	2.08
Ohio	179,081,177	1,517,165,291	11.80
Oklahoma	12,773,133	301,994,718	4.23
Oregon	18,576,060	268,275,751	6.92
Pennsylvania	651,956,107	1,661,153,639	39.25
Rhode Island	2,320,681	29,120,248	7.97

Account State	PA Miles	All Miles	% PA Miles of All Miles
South Carolina	9,148,219	255,582,238	3.58
South Dakota	4,264,744	126,737,247	3.37
Tennessee	32,769,461	652,402,943	5.02
Texas	26,008,932	631,769,969	4.12
Utah	8,767,231	180,954,673	4.84
Vermont	1,327,237	26,717,914	4.97
Virginia	55,233,684	828,304,805	6.67
Washington	1,519,774	32,970,927	4.61
West Virginia	17,612,239	115,388,226	15.26
Wisconsin	45,594,209	651,300,711	7.00
Wyoming	36,676	936,826	3.91
Pennsylvania Dealers	29,874	50,440	59.23
Total:	2,212,919,365	22,251,618,141	9.94 Avg.

Source: Department of Revenue. (See Gross Affidavit, para. 6.)

Exhibit R-2 summarizes the usage or weight-distance taxes which are now collected in ten states. The exhibit was prepared by the ATA, which calls these type of taxes "third structure" or "weight-distance" taxes.[1] ATA classifies these taxes as to their weight basis (either registered gross weight, unladen or empty weight, or vehicle type and number of axles). The ATA has also calculated the tax due during 1983 in cents per mile for a 78,000 pound diesel-powered tractor-semitrailer. There are a wide variety of usage fees which particular states have implemented. These types of fees apply to all heavy trucks traveling within these states, no matter where those trucks are registered. The 1983 tax rates ranged from 2.0 cents per mile to 8.3 cents per mile.

The Association of American Railroads has made similar calculations for an 80,000 pound tractor-semitrailer, and shows the rates for such a vehicle to be slightly

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[1] American Trucking Associations, Inc., *A Primer on State Highway User Taxes*, February 1984, p. 17.

higher (as expected) than for the 78,000 pound tractor-semitrailer.

Pennsylvania's axle tax is prorated by mileage (up to 2,000 miles) like weight-distance taxes, but the Pennsylvania axle tax does not increase for mileage beyond 2,000 miles. The maximum rate of Pennsylvania's axle tax on a per mile basis is 9 cents per mile for a five axle tractor-semitrailer traveling 2,000 miles or less. The average rate paid by all trucks for the Pennsylvania axle tax is much lower. The average for 1983 is estimated to be 3.1 cents per mile for Delaware carriers, 2.1 for Maryland, 3.0 for New Jersey, 2.1 for New York, 2.6 for Ohio, 2.7 for West Virginia, and 2.5 for all carriers from all states.[2] These rates place Pennsylvania's axle tax at the low end of the range of state usage tax rates per mile as shown in Exhibit R-2.

Retaliatory Taxes

Retaliatory taxes are special fees levied by a particular state upon motor carriers from specific other states—usually those which levy usage taxes. The number of states levying retaliatory taxes is constantly changing as states initiate new sources of revenue. According to the American Trucking Associations (ATA), about 22 states have the legal authority to levy retaliatory taxes,[1] but many of them do not exercise these provisions. In most instances, the retaliatory taxes yield little revenue even when they are enforced. However, a retaliatory tax can have significant adverse effects on carriers registered in a state which is being retaliated against.

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[2] These estimates are based on mileage reported by state for carrier fuel use tax purposes and axle tax payments by state for 1983. (See Gross Affidavit, paragraphs 6, 7). The estimates ignore rebates of the axle tax, which are expected to reduce the amounts paid by approximately ten percent. (See Affidavit of Revenue Secretary James Scheiner, paragraph 16.)

[1] American Trucking Associations, Inc. "The Case Against Weight-Distance (Ton-Mile) Truck Taxes," January 1983.

EXHIBIT R-2

AMERICAN TRUCKING ASSOCIATIONS ESTIMATES OF USAGE (WEIGHT-DISTANCE) TAX RATES FOR 78,000 POUND TRACTOR-SEMITRAILER

	Weight Basis for Tax			
	Registered Gross Weight of Combination	Unladen or Empty Weight of Combination [a]	Vehicle Type and Number of Axles	Rate in Cents per Mile
Arizona	x			8.0 [c]
Colorado		x		6.18 [b]
Idaho	x			4.275
Kentucky	x			2.85
Nevada		x		2.25 [c]
New Mexico	x			3.055
New York	x			3.7 [d]
Ohio			x	2.0
Oregon	x			8.3 [e]
Wyoming		x		4.056 [f]

Sources: 1. American Trucking Associations. *Bulletin Advisory Service.* Washington, DC: ATA, 1983.

2. Federal Highway Administration. *Road User and Property Taxes on Selected Motor Vehicles 1982.* Washington, DC: FHWA, U.S. Department of Transportation, 1983.

[a] Unladen or empty weight for this particular combination would be 27,062 pounds (78,000 pounds minus total load weight of 50,938), except in Wyoming. See data for Vehicle Type 11, Source No. 2, Table 1, p. 13.

[b] Weight basis for rate listed is empty weight plus cargo weight. If carriers document a negotiated weight factor for all vehicles in a fleet, the resulting rate per mile may be lower than that given above. Colorado is the only state using negotiated average operating weight rather than registered weight as a basis.

[c] Plus a flat fee of $8.00 per power unit. This alternative mileage fee is usually chosen by carriers in lieu of the unladen weight fees

As a result of the imposition of Pennsylvania's axle tax, eight states now levy or have stated an intention to levy retaliatory taxes on trucks registered in Pennsylvania. These retaliatory taxes would mirror Pennsylvania's axle tax by imposing a similar fee, but only on trucks registered in Pennsylvania. Trucks registered in states other than Pennsylvania are not subject to this retaliatory tax. The eight states are Oklahoma, Nebraska, Florida, Georgia, New Jersey, Vermont, New Hampshire, and Maine.

Other Taxes

Other taxes such as gross receipts taxes on for-hire carriers are levied in sixteen states, including Pennsylvania. Property taxes are assessed on vehicles in twenty-seven states, although not in Pennsylvania.

(from $59 to $595) because those fees may not be prorated. An additional $3.00 Public Service Commission fee is collected by the same agency.

[d] Rate listed is for a fully or partially loaded truck under New York's first compliance option.

[e] Rate per mile given above is for all vehicles using fuels other than gasoline or purchasing gasoline outside Oregon for use in Oregon.

[f] Wyoming law provides that the unladen weight (now tax weight) for a vehicle combination is 40% of the declared maximum gross weight; the unladen weight for the combination used here would therefore be 31,200 pounds.

APPENDIX R-3

COMPARISON OF FEES FOR PENNSYLVANIA TRUCKS COMPARED TO FEES FOR TRUCKS REGISTERED IN OTHER STATES

Comparison with Bordering States

The attached Exhibits R-3 and R-4 show Pennsylvania's current registration fees in comparison to those of its bordering states, for a five axle tractor-semitrailer combination registered at the maximum legal weight of 80,000 pounds for a tractor-semitrailer combination. Most of the mileage of trucks engaged in interstate commerce are traveled by tractor-semitrailer combinations with either five or four total axles.

Pennsylvania's fees are higher than those of any bordering state. Pennsylvania's registration fee is even higher than the sum of the bordering state's registration fee *plus* the Pennsylvania axle tax for each of these

EXHIBIT R-3

FEE FOR REGISTERING A TRACTOR-SEMITRAILER WITH 80,000 POUNDS GROSS COMBINATION WEIGHT

	Tractor	Semitrailer	Total
Pennsylvania	$945	$27	$972
New Jersey	840	20.50	710.50
New York	840	20	860
Ohio [1]	657.50	16	673.50
West Virginia	718.50	(included)	718.50
Maryland	640	15	655
Delaware [2]	384	20	404

Source: Computed from *ATA Bulletin Advisory Service*, June 1984. Fees included registration, vehicle inspection fees, and handling fees.

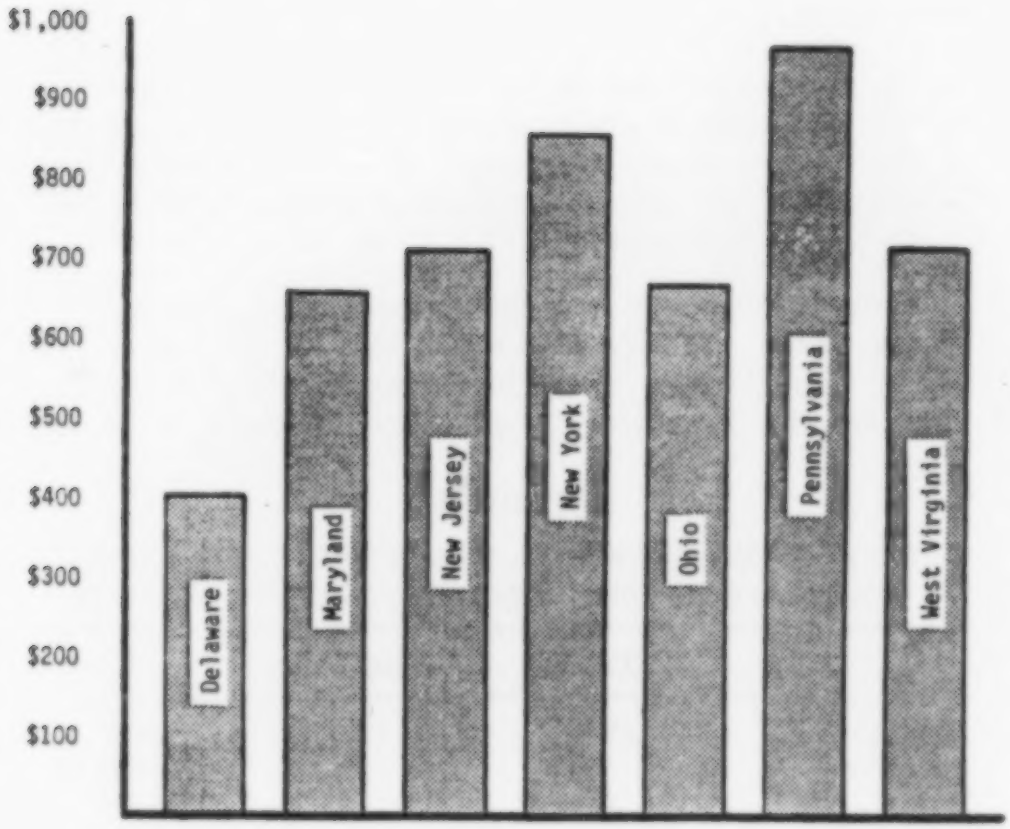
[1] Based on calculations by ATA for unladen weight of tractor, which is the basis for registration fees in Ohio.

[2] Based on using the most advantageous of options for registering both a tractor and a semitrailer.

EXHIBIT R-4

COMPARISON OF REGISTRATION FEES FOR PENNSYLVANIA

AND SURROUNDING STATES FOR AN 80,000 POUND TRACTOR-SEMITRAILER



Source: Computed from ATA Bulletin Advisory Service; American Trucking Associations, Inc.; June 1984. Fees include registration, vehicle inspection fees, and handling fees.

states except New York. Pennsylvania's axle tax is, of course, also collected from carriers registered in Pennsylvania.

Therefore, heavy trucks engaged in interstate commerce which are registered in bordering states pay lower total fees (registration plus Pennsylvania axle tax) to operate in Pennsylvania than do Pennsylvania registered trucks. This is because Pennsylvania grants full reciprocity on registration fees to carriers from the bordering states, even though the other states' registration fees are lower than Pennsylvania's (as much as $568 lower in the case of Delaware).

Comparative Registration Fees in Reciprocity States

Exhibit R-5 shows the registration fees for tractor-semitrailers at 78,000 pounds gross combination weight in all the states to which Pennsylvania grants reciprocity. This information was prepared by the American Trucking Associations as of February 1984. As can be seen, the average registration fee for these states was $688.60, which was $267.40 lower than the fee for a similar combination to be registered in Pennsylvania.

In order to operate in Pennsylvania, both Pennsylvania-registered trucks and out-of-state registered trucks of this combination weight would pay an axle tax of $180, based on five total axles for the tractor and semitrailer. Thus, on average, vehicles registered in these other states and traveling in Pennsylvania would pay less combined registration fees and axle tax than would a Pennsylvania registered vehicle.

Comparative Registration Fees in Member States of the International Registration Plan (IRP)

Member states of the IRP prorate the registration fees due each state on the basis of the proportion of each carrier's total miles of travel which occur in each member

state. Mileage which occurs in non-member states is credited in most IRP states, including Pennsylvania, to the state in which the vehicles are registered.

If a carrier registered in another IRP member state travels 25 percent of its total mileage in Pennsylvania,

EXHIBIT R-5

REGISTRATION FEES FOR 78,000 POUND TRACTOR-SEMITRAILER IN STATES WITH WHICH PENNSYLVANIA HAS RECIPROCITY AGREEMENTS

State	Registration Fee
California	$1,081.00
Connecticut	878.00
Delaware	404.00
Florida	979.50
Georgia	708.00
Indiana	730.25
Maine	795.00
Maryland	639.00
Massachusetts	576.00
Nevada	166.00
New Hampshire	606.52
New Jersey	688.50
New Mexico	75.00
New York	839.00
Ohio	673.50
Rhode Island	430.00
South Carolina	673.00
Vermont	1,175.90
Washington	955.35
West Virginia	698.50
Average	$688.60
Median	$693.50
Pennsylvania	$936.00

Source: American Trucking Associations, Inc., *A Primer on State Highway User Taxes*, February 1984; data as of February 1984.

the Commonwealth of Pennsylvania will receive 25 percent of the registration fee which it would receive if the carrier registered in Pennsylvania and did all its travel within Pennsylvania. Likewise, the carrier would pay its proportional registration fees to other IRP member states on the basis of the proportion of mileage traveled in each IRP state and on the basis of each IRP states' registration fee. The IRP system thus provides for payment of registration fees to all the states travelled in while allowing each to set its own fee structure.

All carriers with trucks registered in IRP member states and which travel in Pennsylvania pay the same Pennsylvania axle tax as do carriers with identical trucks registered in Pennsylvania. Thus, all carriers from IRP member states are treated the same in terms of both registration fees and the Pennsylvania axle tax.

Data from the American Trucking Associations (ATA) and from the Association of American Railroads (AAR) indicate that heavy trucks in Pennsylvania pay registration fees which are higher than the national average. The ATA estimated the average state-registration fee as $863.78 in February 1984 for a five axle diesel-powered tractor-semitrailer of 78,000 lbs (2,000 lbs. less than the maximum weight of 80,000 pounds). ATA calculated the Pennsylvania registration fee for the 78,000 pound combination to be $936. The AAR estimated the average state registration fee as $881 for a five axle tractor-semitrailer of 80,000 pounds in July 1984, and estimated Pennsylvania's registration to be $972.

The average national state registration fees estimated by ATA and AAR differ not only because of the weight differential and the different months, but also due to some differences in assumptions about the fees for those states that do not register on the basis of gross weight or that do not assign the fees to highway uses. Because an average unladen weight for a tractor-semitrailer which can

carry 80,000 pounds must be assumed in many states, the calculation of an average registration fee for all states is quite complicated and can differ based upon the assumptions made by the analyst.

Virtually the same relationships will occur for two axle tractors pulling two axle semitrailers, except their registration fees and Pennsylvania axle tax will be lower than for tractor-semitrailers with a total of five axles. Single unit trucks, most of which have two or three axles, are primarily engaged in local travel within their base state of operation. Data from the United States Census Bureau's Truck Inventory and Use Survey indicate that, on average, only one percent of single unit trucks are used primarily in long range operations.[1]

For those single unit trucks which do operate both within Pennsylvania and its bordering states, Pennsylvania's registration fees are slightly higher for most weight classes than the registration fees of the bordering states. There are some slight exceptions for a few particular weight classes. Both the single unit trucks registered in Pennsylvania and the single unit trucks registered in the bordering states will pay the same Pennsylvania axle tax if they operate in Pennsylvania. Therefore, the situation for single unit trucks is the same as for tractor-semitrailer trucks. A vehicle registered in Pennsylvania will generally pay higher total fees (registration plus axle tax) to operate in Pennsylvania than will a similar vehicle from a bordering state.

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[1] U.S. Department of Commerce, Bureau of the Census, *1977 Census of Transportation: Truck Inventory and Use Survey*, Report No. TC77-T-52, May 1980.

APPENDIX R-4

IMPACT OF REGISTRATION FEE INCREASES ON PENNSYLVANIA'S REGISTRATIONS OF TRUCKS

Many carriers can choose the base state of registration for their trucks from among many states, since they travel extensively in many states and may even have facilities or terminals in many states. Thus, if one state raises its registration fees, and other states do not, it may be to the carrier's advantage to shift some or all of its registrations out of the state which raised registration fees.

The impact of increased registration fees on Pennsylvania truck-tractor registrations is shown in Exhibit R-6. The exhibit shows truck-tractor registrations by year for Pennsylvania and for the six surrounding states. The percentage of truck-tractors in the seven states which were registered in Pennsylvania in each year is

EXHIBIT R-6

PERCENTAGE OF TRUCK-TRACTORS REGISTERED IN PENNSYLVANIA AND THE SIX SURROUNDING STATES: 1978-1982

	1978	1979	1980	1981	1982
Pennsylvania	75,540	76,428	78,677	45,182	45,853
Delaware	8,156	8,512	9,051	5,886	6,113
New York	43,148	45,591	45,039	29,864	30,263
Maryland	17,708	18,103	16,547	15,779	20,979
Ohio	113,491	86,195	95,055	73,343	67,679
West Virginia	8,600	9,374	9,796	8,319	7,187
New Jersey	35,927	24,413	25,340	30,022	30,957
Totals	302,570	268,616	279,505	208,395	209,031
Percent Pa.	24.97%	28.45%	28.15%	21.68%	21.94%

Source: Federal Highway Administration, *Highway Statistics*, annual publication for years shown.

shown on the bottom line. The data show that when Pennsylvania raised registration fees in 1980, the proportion of truck-tractors registered in Pennsylvania declined substantially in comparison to the surrounding states.

Pennsylvania increased its registration fees on August 17, 1980. From 1980 to 1981, registrations of truck-tractors dropped 43 percent in Pennsylvania, dropped 23 percent in Ohio, dropped 15 percent in West Virginia, increased 18 percent in New Jersey, dropped 5 percent in Maryland, dropped 34 percent in New York, dropped 35 percent in Delaware, and dropped 12 percent in the nation as a whole. (This was a period of recession which had substantial negative economic impacts on the trucking industry.)

It is also interesting to note that between 1978 and 1980, when registration fees were stable, Pennsylvania registrations of truck-tractors gained 4 percent, as did Pennsylvania registrations of semitrailers. During the same period, tractors and semitrailers in New York each gained 4 percent.

In summary, Pennsylvania registrations of tractor trucks dropped relative to those of surrounding states when an increase in registration fees occurred. However, when registration fees in Pennsylvaia remained stable, Pennsylvania's registrations grew at the same rate or better than that for surrounding states.

Impact of Retaliatory Taxes

Eight states now retaliate, or have stated an intent to retaliate against Pennsylvaia-based trucks by assessing an axle tax against Pennsylvaia trucks which operate in their states. The eight states are Oklahoma, Nebraska, Florida, Georgia, New Jersey, Vermont, New Hampshire, and Maine. As a result of retaliation by these states, Pennsylvania's registrations of heavy trucks may not be as high as they would be if retaliation did not occur.

Exhibit R-7 shows available data through 1984 on Pennsylvania registrations for the largest trucks. After

EXHIBIT R-7

TRUCK REGISTRATIONS AT 73,280 POUNDS OR OVER IN PENNSYLVANIA 1978-1984

Year	Number of Registrations	Percent Change (Year)
1978	42,409	NA
1979	44,606	+5.2%
1980	48,419	+8.6%
1981	40,413	−16.5%
1982	37,405	−7.4%
1983	39,512	+5.6%
1984 (to July)	35,766	−9.5%

Source: Tabulation provided by Linley Oberman, Pennsylvania Department of Transportation, Bureau of Motor Vehicles. (See Oberman Affidavit, paragraph 4.)

the 1980 tax increase, registrations dropped by 16.5 percent in 1981 and a further 7.4 percent in 1982. This is consistent with the trends shown in the FHWA data (Exhibit R-6). Approximately 11,000 trucks in the heaviest weight classes did not have Pennsylvania registrations in 1982 when compared to 1980.

The 1984 figures are preliminary. However, if registrations do decrease in 1984 compared to 1983, it may be partially due to the retaliatory taxes. For example, a carrier registering in Pennsylvania and operating in Pennsylvania and New Jersey would pay both the Pennsylvania axle tax and the retaliatory New Jersey tax. However, a carrier registered in New Jersey and operating in both states would pay only the Pennsylvania axle tax. Thus, retaliatory taxes may provide a disincentive to register in Pennsylvania.

APPENDIX R-5

USE OF AND NECESSITY FOR USE OF PRIMARY, SECONDARY, AND LOCAL ROADS BY TRUCKS ENGAGED IN INTERSTATE COMMERCE

Within the overall trucking industry, some types of trucking activity take place locally and some are mostly interstate. Single unit trucks, which usually have either two or three axles, provide primarily local services, and travel an average of 10,000 to 20,000 miles per year. Combination trucks (e.g., a tractor linked to a semi-trailer) typicaliy have five axles, but sometimes have four axles or more than five axles. They provide primarily long distance and interstate services and travel an average of 40,000 to 60,000 miles per year. While a large majority of single unit trucks do all or most of their travel within their base state of operation, large combination trucks do most of their travel outside their base states.

Vehicles traveling in interstate commerce, like all other vehicles, have an origin and a destination on roads which do not have full access control. The origin or destination of interstate truck travel may be on a primary, secondary, or local road in either a rural area or an urban area. Thus, trucks engaged in interstate commerce use and benefit from improvements to primary, secondary, and local roads. Because they can not access their origins or destinations without primary, secondary, and local roads, the relative benefits to interstate trucking of these roads is much greater in magnitude than their relative mileage on such roads.

The estimated 1977 miles of travel in Pennsylvania by combination trucks of over 40,000 lbs. is shown in Exhibit R-8. These estimates were prepared by Sydec in conjunction with the Truck Size and Weight Study submitted by the U.S. Department of Transportation to the U.S. Congress. As can be seen, such combination trucks,

EXHIBIT R-8

ESTIMATED 1977 TRAVEL BY ROAD TYPE FOR COMBINATION TRACTOR-SEMITRAILERS OF OVER 40,000 POUNDS REGISTERED WEIGHT

Type of Area	Vehicle Miles of Travel (millions)				
	Interstate	Arterial	Collector	Local	Totals
Urban	159	237	48	61	505
Rural	439	385	189	141	1,154
Total	598	622	237	202	1,659

Source: Derived by Sydec from the sample survey conducted by the U.S. Bureau of the Census as part of the Truck Inventory and Use Survey (1977), and from classification counts for types of vehicles using each type of road in Pennsylvania. (See Affidavit of George Wass, paragraph 5.)

the majority of whose mileage is devoted to interstate travel, travel hundreds of millions of miles on all the road systems of Pennsylvania. Their total mileage on Interstates, arterials, collectors, and local routes was over 1.6 billion vehicle miles of travel in 1977. About 64 percent of the travel by these trucks was on the arterial, collector, and local roads, while 36 percent was on the Interstate highway system. Thus, these vehicles use all the road systems in the State of Pennsylvania. The fact that they may be engaged in interstate commerce doesn't mean that their travel is solely, or even mostly on Interstate highways.

Exhibit R-9 shows the estimated percentage of travel in-state and out-of-state by five axle combination trucks based in Pennsylvania and its six surrounding states. These estimates were derived from the U.S. Bureau of the Census Truck Inventory and Use Survey, which is conducted every five years. The Census asks truck owners (among other questions) what percentage of miles

EXHIBIT R-9

ESTIMATED PROPORTION OF MILEAGE IN BASE STATE AND OUT-OF STATE FOR FIVE AXLE COMBINATION TRUCKS

Base State of Registration	Percentage of Miles	
	In-State	Out-of-State
Pennsylvania	46%	54%
Delaware	20%	80%
Maryland	41%	59%
New Jersey	43%	57%
New York	51%	49%
Ohio	47%	53%
West Virginia	43%	57%

Source: Estimated by Sydec from the sample survey data collected by the Bureau of the Census as part of the Truck Inventory and Use Survey, 1977.

of travel by their truck occurs in the base state of operation.

As can be seen, in Pennsylvania and most surrounding states, a majority of miles of travel by five axle combinations occurs outside the base state of operation. The maximum percentage of out-of-state travel by state is 80 percent for combinations based in Delaware, and the smallest is 49 percent for combinations based in New York.

The Affidavit of Harry S. Cohen contains an estimation of the miles of travel in Pennsylvania by trucks subject to the axle tax, broken down by Pennsylvania-based trucks, trucks from other IRP states, and trucks from non-IRP states.

The needs of large combination trucks to access terminals and destinations is recognized by specific federal laws and regulations. The Federal Highway Administra-

tion has designated a network of highways on which commercial vehicles with the dimensions authorized by the Surface Transportation Assistance Act of 1982 (STAA) may operate. The STAA authorized the maximum length, width, and weight limits for large trucks and made those limits consistent throughout the country[1] Forty-four major routes within Pennsylvania are part of the national network. Pennsylvania has also designated a substantial number of access routes to allow large commercial trucks to get to and from origins and destinations which are off those routes.

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[1] The designated network is codified in 23 CFR Part 638, contained in Federal Register Volume 49, Number 109, Tuesday, June 5, 1984.

AFFIDAVIT

[In Support of Respondents' Motion for Summary Judgment]

I, JOSEPH R. STOWERS, state that the following facts are true and correct to my personal knowledge.

1. I am employed by System Design Concepts, Inc. (Sydec), a leading expert consulting firm in the area of highway taxation and finance. I hold the position of President. I have held this position since 1981 and have been employed by System Design Concepts, Inc., since March 1970.

2. During the last fourteen years I have conducted numerous studies and analyses of highway system characteristics and use by various classes of vehicles. I have conducted detailed analyses of such topics for agencies such as the National Academy of Sciences, the Federal Highway Administration, and the American Association of State Highway Officials. A resume of my experience is attached as Exhibit S-1.[1]

3. An interstate carrier desiring to operate vehicles in Pennsylvania has three basic options for registration:

   a. The carrier may register any vehicle, or fleet of vehicles, under the International Registration Plan (IRP) in any of the 27 states (or in Alberta, Canada) which are members of the IRP (including Pennsylvania), with certain conditions and exceptions, as defined in Appendix S-1.

   b. The carrier may register any vehicle in another state (or province of Canada) which

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[1] All Appendices referred to in, and attached to, this Affidavit are incorporated in the Affidavit as if fully set forth. This includes all exhibits within those appendices. Unless otherwise stated, the facts set forth in those appendices are known to me personally.

has a reciprocity agreement with Pennsylvania, as explained in Mr. Reno's Affidavit, Appendix R-2, "Types of Highway User Fees."

c. The carrier may register any vehicle in Pennsylvania on a non-IRP basis—i.e., conventional registration, often referred to as non-apportioned registration to contrast it with the process of apportioning registration fees among states under the IRP.

4. If a carrier chooses to register vehicles under the IRP, he may do so in any state which qualifies as a "base jurisdiction"—i.e., any member state or province where the carrier "has an established place of business, where mileage is accrued by the fleet and where operational records of such fleet are maintained or can be made available . . ." Thus, a carrier might be able to register in any of several states where an office might be located.

5. In general, carriers are quite free to choose the state of registration if they register vehicles on a non-apportioned basis. Most states do not impose strict requirements on a carrier in order to register because the states collect fees that would not otherwise be collected if the carrier registered elsewhere.

6. Pennsylvania's law requires carriers which have their principal place of business in the Commonwealth to register their locally-based fleet in Pennsylvania (see Affidavit of Linley Oberman, paragraph 6). However, this is difficult to enforce for vehicles which travel a high proportion of their mileage in one or more other states because of the difficulty of distinguishing which state is the base of operation of each such vehicle.

7. Thus, under any of the three basic options, a carrier is quite free to change the jurisdiction of registration to suit his convenience or to reduce his total tax payments. In most states, it is not even necessary to have an actual office—the use of an agent will suffice. If records must be made available for auditing they can either be brought to the state or the auditors can be required to travel out-of-state to the actual base of operation (although the carrier is required to pay such travel expenses under the IRP agreement).

8. Carriers have been increasingly able to take advantage of the freedom of movement among the states for registration purposes in recent years because of changes that have been taking place in the industry. Many years ago, the industry was characterized by many small carriers operating within one state or one small region. The steady, long-term trend has been toward larger national carriers which operate in many states. Even the smaller carriers tend to operate over a much larger geographic area, so that a very high proportion of interstate carriers now have the flexibility to change their state of registration.

9. Evidence exists to demonstrate that carriers have taken advantage of this freedom of movement for registration purposes to reduce their overall tax payments. Increases in Pennsylvania registration fees have been followed by shifts in registration to surrounding states (see Reno's affidavit). Exhibit S-1 shows that truck-tractor registrations are particularly high in Delaware, which is the state with the lowest heavy truck registration fees of all non-IRP states in the eastern half of the country. (Only New Mexico

and Nevada have lower rates, but they are both states which have usage taxes, as described in Mr. Reno's affidavit, possibly tending to discourage registrations in those states.) The exhibit also shows that states with the highest heavy vehicle registration fees tend to have lower concentrations of truck-tractors. California and Vermont have the highest fees and are two of the four lowest in concentration of registrations.

10. Carriers have an incentive to register vehicles under the IRP if they regularly operate vehicles in several jurisdictions which are members of IRP. Administrative costs can be significantly reduced because of the ease of registering vehicles in several states and because of the standardization of reporting and payment of fees. As a result, the number of vehicles registered under IRP has grown steadily over the decade since it was created, and the number of member jurisdictions has grown from four in 1973 to 28 today. Membership is expected to increase to 34 as a result of decisions expected this year, and several other states are in various phases of considering membership. Moreover, the National Governors' Association has recently adopted a program to promote additional membership in IRP and take other actions that will increase uniformity among the states to reduce administrative burdens on the motor carrier industry.

11. Under the IRP registration proration plan, each carrier pays fees to each jurisdiction based on the proportion of miles traveled in the jurisdiction and the registration fee of the jurisdiction. Thus, for example, when Pennsylvania increased its registration fees in 1976 and 1980 and decreased them in 1982, these fee changes were

distributed to all in-state and out-of-state IRP carriers on an equal basis in proportion to the relative shares of their mileage in Pennsylvania. Because the IRP system is becoming increasingly popular, it will be applicable to an increasing proportion of all interstate carriers in the future.

12. Pennsylvania has been the only state in the Northeast to join the IRP system to date. This has left the Commonwealth surrounded by six non-IRP states. Interstate carriers can operate between all of these states and Pennsylvania under a set of bilateral reciprocity agreements (see Mr. Reno's affidavit). Because these states have no proration agreements with the Commonwealth, changes in registration fees in any of these states are not apportioned and they result in incentives for migration of vehicles among these states. The general trend has been for these non-IRP states to have lower registration fees than Pennsylvania and other IRP states, and to attract increased registrations as a result (see Mr. Reno's affidavit). The overall long-term trend of this pattern, therefore, has been to favor carriers which locate in low fee non-IRP jurisdictions and operate in other nearby states (such as Pennsylvania) under reciprocity agreements. Carriers which have left Pennsylvania and migrated to adjoining states have benefited from this trend, while Pennsylvania highway user taxpayers, including carriers remaining in the Commonwealth, have not.

13. The vast majority of heavy vehicles registered in Pennsylvania travel a substantial portion of their mileage outside of Pennsylvania and are owned by firms engaged in business outside, as well as in the Commonwealth.

The carriers which travel the highest proportion of their mileage out-of-state are those that have IRP registrations. Exhibit S-3 shows that only 44.7 percent of all mileage traveled by Pennsylvania-based IRP carriers is in-state. The majority of their mileage (55.3 percent) is outside of the state, largely in the surrounding states but also widely scattered throughout the East and Middle Atlantic states.

Exhibit S-4 presents another related set of estimates of in-state vs. out-of-state mileage for a much larger group of vehicles—all vehicles of 17,000 pounds or more registered weight which travel some or all of their mileage in Pennsylvania. The first row of this exhibit shows that about 60 percent of the mileage of those carriers located in Pennsylvania is in-state, or alternatively, that about 40 percent of their mileage is out-of-state. This estimate (40%), however, is probably an underestimate of the proportion of mileage which is out-of-state for all Pennsylvania-based vehicles which are subject to the axle tax.[1]

Exhibit S-5 presents a third tabulation showing estimates of the proportion of mileage which is out-of-state for each of several classes of trucks, broken down by configuration and number of

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[1] Three reasons exist for believing that it is an underestimate: (1) all vehicles over 17,000 pounds registered weight are included: vehicles of less than 26,000 pounds (the threshold for the axle tax) tend to travel fewer miles out-of-state; (2) the estimate of mileage by vehicles having 90 percent or more of their mileage in Pennsylvania (see source note in Exhibit S-4) is probably high because it is based on 1977 data and Pennsylvania registrations have decreased substantially since then; and (3) carriers have an incentive for stating that they have 90 percent or more of their mileage in Pennsylvania to avoid having to periodically report mileage, fuel tax paid, and other data.

axles. The proportion of mileage which is out-of-state is estimated to be about 36 percent for all trucks covered, but these include all trucks over 14,000 pounds. If the lightest class of trucks, two axle single units, is removed from the tabulation, this estimate increases to about 47 percent. This is a more realistic estimate of the proportion of mileage which is out-of-state for all Pennsylvania-based trucks subject to the axle tax because most of the two axle trucks are registered at below 26,000 pounds.[2]

14. Firms which operate trucks primarily intrastate are seldom in direct competition with interstate carriers. As Exhibit S-5 shows, the trucks which are primarily involved in intrastate operations are single unit trucks. The majority of the vehicle miles of all trucks which fall in the category of 0 to 25 percent of mileage out-of-state are two axle trucks. More careful analysis of these data would show that trucks operating primarily intrastate are using quite different equipment, carrying different commodities, and have basically different markets from interstate carriers.

15. A very high proportion of the damage to Pennsylvania highways and bridges is due to travel by out-of-state carriers because of the high proportion of the total truck vehicle-miles of travel (VMT) in Pennsylvania by out-of-state carriers, and because of the fact that out-of-state

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[2] The average registered weight for trucks in this sample (two axle Pennsylvania-based trucks of over 14,000 pounds registered weight) is 16,230 pounds. Moreover, the trucks in this class which travel more miles out-of-state tend to be ones which operate at higher weights, on the average.

carriers operate heavier equipment in Pennsylvania than Pennsylvania-based carriers, on the average.

Exhibit C-1 of Mr. Harry S. Cohen's affidavit shows that an estimated 34 percent of all truck traffic on Pennsylvania highways is non-IRP out-of-state carriers. That exhibit also shows that the majority (about 55 percent) of all truck traffic on Pennsylvania highways is out-of-state carriers.

Exhibit S-4 shows that substantial portions of mileage reported to Pennsylvania by carriers located in all surrounding states are in Pennsylvania—ranging from a high of 17.2 percent for Maryland to 13.5 percent for Delaware. Note that the states which are the source of the highest proportion of mileage in Pennsylvania are the non-IRP states surrounding Pennsylvania.

Exhibit S-6 presents a tabulation of out-of-state mileage percentages for all of the six (non-IRP) states bordering Pennsylvania, in the same format as presented for Pennsylvania-based trucks in Exhibit S-5. This exhibit shows percentages of out-of-state mileage for surrounding states very similar to Pennsylvania. The one notable difference is that a somewhat higher proportion of the mileage of five axle combinations (58 vs. 54 percent) is out-of-state, suggesting that surrounding states' heavier trucks may travel a higher proportion of their miles on Pennsylvania highways than the reverse.

16. Pennsylvania's axle tax is $36 per axle for all vehicles registered at over 26,000 pounds. Thus, vehicle owners pay the tax in direct proportion to the number of axles on their trucks, which is a reflection of the fact that highway costs in-

crease as the axle loads and gross weights of vehicles increase. Exhibit S-7 shows that vehicle weights in Pennsylvania do, in general, increase as the number of axles increases. For both loaded and empty single unit trucks, the average weight of 3 or more axle trucks was about twice the weight of 2 axle, 6 tire trucks in each of the three years for which data have been reported. Also for both loaded and empty tractor-semitrailer combinations, the average weight of vehicles went up without exception as the number of axles increased for each of the three years.[1]

/s/ Joseph R. Stowers
JOSEPH R. STOWERS

Sworn to and subscribed to me
this 17th day of August, 1984.

/s/ [Illegible]
NOTARY PUBLIC

My Commission expires,
9-30-84

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[1] The only exception to the general rule that weight goes up as axles increase is that loaded 4 axle combinations did not weigh more than single unit trucks with 3 or more axles (which are mostly 3 axle trucks) in 1978—they were almost the same average weight (40,400 vs. 40,600 pounds respectively). However, the lower portion of Exhibit S-7 shows that when the average of all vehicle weights are compared, taking into account the fact that single unit trucks are more often empty than tractor-semitrailer combinations, the average weights of 4 axle combinations was always substantially greater than the ave-age weights of single unit trucks of 3 or more axles.

APPENDIX S-1

CONDITIONS AND EXCEPTIONS FOR REGISTRATION OF VEHICLES UNDER THE INTERNATIONAL REGISTRATION PLAN

This appendix summarizes the conditions and exceptions for registering vehicles, or fleets of vehicles, under the IRP, based on the terms of the multi-state agreement of which Pennsylvania is a member.[1]

Types of vehicles which are excluded are recreational vehicles, vehicles displaying restricted plates, city pick up and delivery vehicles, buses used in transportation of chartered parties, and government-owned vehicles. Vehicles which are covered by the IRP program are vehicles used, or intended for use in two or more member jurisdictions and which are used for transportation of persons or goods. The system normally covers all such vehicles having a gross weight in excess of 26,000 pounds or units of truck combinations having gross weights in excess of 26,000 pounds. A truck-tractor having three or more axles also qualifies regardless of weight. In addition, registrants of the IRP have the option of including vehicles having gross weights of 26,000 pounds or less and two axle vehicles which meet the other criteria.

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[1] *International Registration Plan*, American Association of Motor Vehicle Administrators, revised as amended 3/1/84.

EXHIBIT S-2

COMPARISON OF HEAVY TRUCK REGISTRATION FEES AND
NUMBER OF TRUCK-TRACTOR REGISTRATIONS IN RELATION TO POPULATION
FOR ALL NON-IRP STATES

	Registration Fee for 78,000 Lbs.1/	Percent of U.S. Population, 1980 2/	Percent of 1980 Registrations	Ratio of Truck-Tractor Share to Population Share
California	$1,081	10.45	5.05	0.48
Connecticut	878	1.37	0.48	0.35
Delaware	404	0.26	0.65	2.50
Florida	979.50	4.30	4.62	1.07
Georgia	708	2.41	2.39	0.99
Indiana	730.25	2.42	3.27	1.35
Maine	795	0.50	0.50	1.00
Maryland	639	1.86	1.18	0.63
Massachusetts	576	2.53	1.95	0.77
Nevada	166	0.35	0.20	0.57
New Hampshire	606.52	0.41	0.35	0.85
New Jersey	688.50	3.25	1.81	0.57
New Mexico	75	0.58	0.54	0.93
New York	839	7.75	3.21	0.41
Ohio	673.50	4.77	6.78	1.42
Rhode Island	430	0.42	0.44	1.05
South Carolina	673	1.38	1.29	0.93
Vermont	1,175.00	0.23	0.09	0.40
Washington	955.35	1.82	2.68	1.47
West Virginia	698.00	0.86	0.70	0.81

1/American Trucking Associations, Inc., A Primer on State Highway User Taxes, February 1984, p. 4.

2/U.S. Bureau of the Census, 1980 Census of Population, U.S. Summary, April 1983.

3/Federal Highway Administration, Highway Statistics 1980.

EXHIBIT S-3

SUMMARY OF MILEAGE TRAVELED IN VARIOUS STATES
BY PENNSYLVANIA-BASED IRP VEHICLES

State	Annual Miles (thousands)	Percent
Pennsylvania	460,154	44.7
Ohio	90,181	8.8
New York	66,753	6.5
New Jersey	64,443	6.3
Virginia	50,299	4.9
Maryland	49,549	4.8
Indiana	24,937	2.4
West Virginia	17,902	1.7
North Carolina	17,815	1.7
Connecticut	17,518	1.7
Tennessee	14,333	1.4
Illinois	14,247	1.4
Massachusetts	10,901	1.1
Delaware	9,683	0.9
All others	121,191	11.8
Total	1,029,907	100.1

Source: Tabulation of reported annual mileage from 2,572 carriers registering vehicles in Pennsylvania under IRP, covering 16,174 power units of over 26,000 pounds registered weight. Prepared by Linley Oberman, Pennsylvania Department of Transportation. (See Oberman Affidavit, paragraph 5 .)

EXHIBIT S-4

SUMMARY OF ANNUAL MILEAGE IN PENNSYLVANIA AS A PERCENT OF ALL MILEAGE TRAVELED FOR ALL CARRIERS REPORTING MILEAGE TO PENNSYLVANIA

State Where Carrier Is Located	Annual Miles (millions) In Pennsylvania	ATI Miles	Percent in Pennsylvania
Pennsylvania	1,587	2,645	60.0
Maryland	82.5	479	17.2
New York	134	797	16.8
New Jersey	149	967	15.4
West Virginia	17.6	115	15.3
Delaware	34.1	253	13.5
Ohio	179	1,517	11.8
Massachusetts	21.0	221	9.5
Michigan	80.1	904	8.9
Connecticut	11.4	132	8.6
Florida	114	1,410	8.1
Rhode Island	2.32	29.1	8.0
Indiana	84.2	1,155	7.3
All Others	622	12,562	5.0
Total	3,118	23,186	13.5

Source: Data for all states except Pennsylvania are based on a tabulation of reported mileage by all carriers reporting mileage in Pennsylvania for carrier fuel use tax purposes, prepared by Michele Gross, Pennsylvania Department of Revenue. (See Gross Affidavit, paragraph 6 .) All vehicles over 17,000 pounds gross registered weight are required to report, except for vehicles declared to have 90 percent or more of their mileage in Pennsylvania. Mileage by such vehicles was estimated by Sydec from the sample survey compiled by the U.S. Census Bureau as part of the 1972 Truck Inventory and Use Survey. Mileage for these vehicles was then added to the tabulation produced by Michele Gross for Pennsylvania trucks.

EXHIBIT S-5

SUMMARY TABULATION OF REPORTED OUT-OF-STATE MILEAGE
FOR VARIOUS TYPES OF TRUCKS BASED IN PENNSYLVANIA

Type of Trucks	Total Annual Mileage (millions)[1]	Proportion of Reported Mileage Falling in Ranges of Percent of Mileage Out-of-State[1]				Approximate Percent Out-of-State Mileage[2]
		0-25%	26-50%	51-75%	76-100%	
Single Unit Trucks:						
2 axle	1,330	85%	9%	3%	3%	12%
3 axle	205	82	9	9	1	13
Other	117	96	4	0	0	6
Combinations:						
3 axle	44	39	20	28	12	40
4 axle	406	31	30	29	10	42
5 axle	1,730	19	25	27	29	54
Other	87	16	50	18	15	43
All Trucks	3,916	49	19	17	15	36
All Trucks Except Single Unit 2 axle	2,587	30	25	24	22	47

[1]/Calculated by Sydec from the sample survey data compiled by the U.S. Census Bureau as part of the 1977 Truck Inventory and Use Survey for heavy vehicles (excludes trucks of 14,000 pounds or less).

[2]/Estimated by Sydec based on the data reported in the preceding columns.

EXHIBIT S-6

SUMMARY TABULATION OF REPORTED OUT-OF-STATE MILEAGE
FOR VARIOUS TYPES OF TRUCKS IN THE SIX STATES SURROUNDING PENNSYLVANIA

Type of Trucks	Total Annual Mileage (millions)[1]	Proportion of Reported Mileage Falling in Ranges of Percent of Mileage Out-of-State[1]				Approximate Percent Out-of-State Mileage[2]
		0-25%	26-50%	51-75%	76-100%	
Single Unit Trucks:						
2 axle	4,987	77%	13%	5%	5%	20%
3 axle	741	79	12	6	2	18
Other	96	84	12	4	0	15
Combinations:						
3 axle	222	43	20	24	13	38
4 axle	1,481	40	27	18	15	38
5 axle	3,734	20	18	29	34	58
Other	326	27	34	21	18	45
All Trucks	11,588	52	17	15	16	35
All Trucks Except Single Unit 2 axle	6,601	33	20	23	24	46

[1]/Calculated by Sydec from the sample survey data compiled by the U.S. Census Bureau as part of the 1977 Truck Inventory and Use Survey for heavy vehicles (excludes trucks of 14,000 pounds or less).

[2]/Estimated by Sydec based on the data reported in the preceding columns.

EXHIBIT S-7

AVERAGE WEIGHTS OF PENNSYLVANIA TRUCKS BY VEHICLE TYPE FOR LOADED AND UNLOADED TRUCKS IN 1975, 1976, AND 1978

Load Status	Year Weighed	Average Weights in Thousands of Pounds				
		Single Unit Trucks		Tractor-Semitrailer Combinations		
		2 axle 6 tire	3 or more axles	3 axle	4 axle	5 or more axles
Loaded	1978	13.7	40.6	27.4	40.4	58.8
"	1976	11.8	38.0	31.2	40.9	60.1
"	1975	16.0	34.2	28.9	39.0	56.9
Empty	1978	10.0	21.6	25.1	28.7	32.1
"	1976	7.3	19.8	23.3	27.7	33.2
"	1975	10.9	19.5	21.5	26.9	33.2
All Vehicles 1/	1978	11.8	30.8	26.7	37.1	51.4
" "	1976	11.0	30.7	29.2	37.8	53.3
" "	1975	13.7	26.6	26.8	35.6	50.3

1/ Estimated based on nationwide averages of the percentages of loaded single unit trucks and combinations for each of the three years.

Source: 1975-1979 National Truck Characteristics Report, U.S. Department of Transportation, Federal Highway Administration, June 1981, pages 73, 78, 79, 147, and 153.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

No. 267 C.D. 1983

AMERICAN TRUCKING ASSOCIATIONS, INC., et al.,
Petitioners

v.

ROBERT K. BLOOM, Secretary of the Department of Revenue et al.,
Respondents

AFFIDAVIT

[In Support of Respondents' Motion for Summary Judgment]

I, James I. Scheiner, state that the following facts are true and correct to the best of my knowledge, information and belief.

1. I am the Secretary of the Commonwealth of Pennsylvania, Department of Revenue and have occupied this position since January 14, 1983.

2. As Secretary of Revenue it is my duty to administer and collect state taxes including the axle tax imposed by Chapter 99 of the Vehicle Code.

3. The axle tax first became effective on April 1, 1983 and is imposed on carriers who operate vehicles in excess of 26,000 pounds gross weight or registered gross weight on the highways of Pennsylvania.

4. The rate of tax is $36 per axle which is imposed annually at the time of motor vehicle registration for Pennsylvania-registered vehicles or at the time of application for a motor carriers road tax identification marker for vehicles registered in states other than Pennsylvania. For motor vehicles traveling less than 2,000 miles an-

nually in Pennsylvania, a rebate is provided in accordance with the following formula:

$$\frac{2{,}000 - \text{actual miles travelled}}{2{,}000} \times \text{axle tax paid} = \text{rebate.}$$

5. The existing processing and collection system of the Department of Revenue for motor carriers road tax is employed to process and collect the axle tax from out-of-state registered vehicles. Since all out-of-state registered vehicles subject to the axle tax are required to apply for and obtain motor carriers road tax identification markers, collection of the axle tax is implemented by simply adding additional lines on the road tax marker application form to identify the number of vehicles in excess of 26,000 pounds in each axle category.

6. Axle tax payment information is recorded on the Department of Revenue records by inserting the data into the existing motor carriers road tax account structures.

7. The existing motor vehicle registration system of the Department of Transportation is employed to collect the axle tax on motor vehicles which are registered in Pennsylvania. This is accomplished by a slight modification of the registration renewal card to allow the carrier to indicate the number of axles and the amount of axle tax due on each vehicle. On new registrations the axle tax information is submitted simultaneously with the application for registration.

8. Axle tax payment information on Pennsylvania-registered vehicles is recorded by adding the tax information to the existing Department of Transportation records relative to each registered vehicle.

9. To evidence payment of the axle tax with respect to a vehicle and to facilitate visual enforcement of the axle tax, each motor vehicle for which the tax is paid is required to display an axle tax marker showing the number of axles for which tax has been paid.

10. For out-of-state registered vehicles, the issuance of the axle tax markers has been integrated with the existing process for issuing motor carriers road tax identification markers. For 1984 the axle tax identification marker and the road tax identification marker was combined into a single marker. For 1983, a separate axle tax marker was required to be placed upon the 1983 road tax identification marker, which because of time restraints could not be modified to combine the two. The 1983 road tax marker and axle tax markers were transmitted simultaneously to each carrier.

11. For Pennsylvania-registered motor vehicles, the issuance of the axle tax identification marker has been incorporated into the existing motor vehicle registration process of the Department of Transportation. An axle tax marker is mailed to the registrant of the vehicle along with the validated motor vehicle registration and license plate sticker.

12. Motor carriers eligible for a rebate because a vehicle travels less than 2,000 miles in Pennsylvania during the applicable axle tax period are required to file with the Department of Revenue a notice of intent to apply for a rebate during the 10th month of the tax period (the notice of intent is required only for the 1983 axle tax year) and an application for a rebate within 90 days following the end of the tax period. The notice of intent and application for a rebate information is recorded on computer. Rebates are issued by the Department of Revenue and audits are conducted on a selective basis.

13. A temporary permit, authorizing the operation of a motor vehicle for five consecutive days without payment of the axle tax and without display of the axle tax and motor carriers road tax identification marker may be obtained through authorized wire service agents at a fee of $25 plus the agent's charge for the wire service.

14. The axle tax is enforced by the Pennsylvania State Police, the Department of Revenue enforcement agents, and the local police. Operation of a motor vehicle without a required axle tax identification marker subjects the operator to a fine of not less than $200.

15. Neither the Department of Revenue nor the Department of Transportation hired any additional personnel to administer the axle tax. There was no need for additional appropriations for either agency to pay for minor additional costs of axle tax marker printing. Axle tax markers were mailed to out-of-state licensees along with motor carrier road tax markers, and to Pennsylvania licensees along with motor vehicle license renewals.

16. Axle tax revenues for fiscal year 1982-83 and fiscal year 1983-84 are as follows:

	Trucks registered in Pennsylvania	Trucks registered other than Pa.	Temporary Permits	Fines	Total
1982-83	$ 8,684,008	$45,292,372	$1,147,855	—	$55,124,235
1983-84	$12,314,308	$62,088,820	$4,547,849	$1,448,872	$80,399,849

The Department of Revenue is in the process of paying axle tax rebates for the April 1, 1983 to March 31, 1984 period and estimates that rebates will total about $6,000,000.

/s/ James I. Scheiner
JAMES I. SCHEINER

Sworn to and subscribed before
me this 10th day of August, 1984.

/s/ Barbara W. Furjanic
NOTARY PUBLIC

BARBARA W. FURJANIC
Notary Public, Swatara Township, Dauphin County
My Commission Expires May 30, 1988

AFFIDAVIT

[In Support of Respondents' Motion for Summary Judgment]

I, ROY TAYLOR, state that the following facts are true and correct to my personal knowledge.

1. I am employed by the Commonwealth of Pennsylvania Department of Transportation. I hold the position of Director of the Center for Program Development and Management. I have held this position for approximately 1½ years.

2. Immediately prior to entering this position I was Division Chief of PennDOT's Highway Program Development Division. I held that position for 1½ years.

3. In my capacity as Director of the Center for Program Development and Management, and in my previous position (see ¶ 2 above), I have been involved in, among other things, the planning, development and implementation of the bridge repair and replacement program which is funded with Axle Tax revenues ("Billion Dollar Bridge Program").

4. Under this bridge program (see ¶ 3), Axle Tax revenues will fund the Commonwealth's share of a program to restore or replace 979 bridges on Pennsylvania's state, county and municipal roads. Expenditures under this program will exceed $1 billion. The bridge projects funded by the Axle Tax will be initiated over the next five years. The specific bridges which have been authorized for repair or replacement are identified in Act 1982-235, the "Highway-Railroad and Highway Bridge Capital Budget Act for 1982-1983."

5. Over the projected six-year life of the program, the Commonwealth will spend approximately $800 million for bridge repair and replacement. This amount will be supplemented by some $420 million in federal aid and $40 million in local government expenditures.

/s/ Roy W. Taylor
ROY TAYLOR

Sworn to and subscribed
before me this 17th day
of August, 1984.

/s/ Stacia Lee Ferretti
NOTARY PUBLIC

STACIA LEE FERRETTI
Notary Public,
My Commission
Expires Oct. 29, 1984
Harrisburg, PA Dauphin County

AFFIDAVIT

[In Support of Respondents' Motion for Summary Judgment]

I, JOHN W. FISHER, state that the following facts are true and correct to my personal knowledge.

1. I have been a member of the Lehigh University faculty since 1964 and was promoted to Professor of Civil Engineering (my current position) in 1969. Prior to joining the Lehigh staff, I was Assistant Bridge Research Engineer with the National Academy of Sciences. A resume of my experience is attached as Exhibit "A" below.[1]

2. As the attached resume shows, I am a structural engineer specializing in bridge structural connections, fatigue and fracture resistance of riveted, bolted and welded bridge connections, and the behavior and design of composite steel-concrete bridge members.

3. In simple terms, the two key elements which affect the design, and thus the cost, of bridges are: the "dead load," or the stress produced by the mass of the bridge structure itself; and the "live load," or the stress produced by the weight of the vehicles on the bridge, including the "impact", or stresses resulting from the movement of vehicles on the bridges. Bridges are designed so that under the total loads they are subjected to (dead load, live load, and impact) over a projected period of time ("design life"), they have an acceptable margin of safety against the "limits of structural usefulness," or load-bearing capacity of the bridge's structural members.[2] The more load a bridge must withstand, the stronger the bridge must be, and the greater its construction cost will be.

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[1] Exhibit "A" and Appendix "A," refered to in and attached to this Affidavit, are incorporated in this Affidavit by reference, as though fully set forth.

[2] Tall et al. Structural Steel Design, 2nd Edition, Ronald Press Co., N.Y., 1974.

4. Adequate strength is necessary to insure safe passage or traffic across the bridge. However, there are a number of other requirements relating to bridge performance: for example, the bridge's vibration must not annoy users, it must stay in service for a number of years without excessive maintenance, and it must be resistant to cracking and other structural deterioration.

5. The projected "live loads" for which bridge structures of various types are designed are found in design specifications issued by the American Association of State Highway and Transportation Officials ("AASHTO"). The AASHTO specifications are used in the design of bridges by state highway departments throughout the United States.

6. The first edition of the AASHTO (previously "AASHO") Specification for Highway Bridges was published in 1931. In that specification, design live loads were based upon expected use of bridges by 10, 15 or 20 ton trucks ("H-loading"). The 1941 AASHTO specification introduced design live loads based upon expected bridge use by 72,000 pound trucks ("HS loading") (for tractor truck and semitrailer), but use of this loading by bridge designers was optional.

7. The 1944 edition of the AASHTO specification introduced "variable spacing" between the drive and trailer axles for the HS loading, and required its use. The H and HS loadings have remained the same up to the 12th edition of the AASHTO specification in 1977.[2]

8. Since 1977, several states have adopted the "HS-25" design live load. The HS-25 loading is based upon expected use of bridges by 90,000 pound trucks. The states which have adopted HS-25 truck loading include

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[2] The American Association of State Highway and Transportation Officials, Standard Specifications for Highway Bridges, AASHTO, 12th Ed., 1977, Washington, D.C.

Idaho, Maine, Michigan, New York, Oregon, Pennsylvania and Vermont.

9. The changes in design truck loading which have taken place since 1931 (see paragraphs 6-8 above) reflect the necessity to increase the design load as truck traffic weight increases. The increased traffic load requires more bridge strength, to resist the resulting increase in forces that the bridge will experience. This increases the construction cost of the bridge.

10. One of the most important performance criteria that a bridge must be designed for is fatigue strength. The fatigue life of a bridge depends primarily on the weight, distribution, and number of vehicles passing over the bridge, and on the characteristics of the bridge "details", which include, for example, welded, riveted or bolted connections.[3]

11. Metal fatigue is caused in bridges by cycles of increased stress whenever heavy vehicles use the bridge. The effect of these "stress cycles" is cumulative, and in time will lead to cracks in the metal, particularly at welded connections. This is true of both steel and concrete bridges. Eventually, bridge components will crack unless the allowable vehicle weight is reduced or costly repairs are undertaken.

12. Measurements on bridge structures have demonstrated that cars do not cause significant stress cycles as a result of passing over the bridge. All significant stress cycles are produced by the trucks that cross the bridge. Generally trucks must exceed 20,000 pounds before stress cycles are significant.[4]

13. In order to minimize the possibility of fatigue cracking it is necessary to adjust the size of bridge com-

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[3] Fisher, J. W. Bridge Fatigue Guide-Design and Details, AISC, Publication T 112-11/77, 1977.

[4] See n. 3 above.

ponents so that the range of stress cycles caused by vehicular traffic is decreased at commonly used details. This results in increased bridge component size and in the additional costs associated with bridge details that provide higher fatigue resistance. Unless these precautions are taken, the bridge will eventually crack, unless the allowable vehicle weight is reduced.

14. Many existing bridges have details now known to be susceptible to fatigue damage. As a result it is necessary to repair or "retrofit" these bridge structures, or they will eventually crack. This situation becomes more acute with heavier truck loads.

15. Fatigue damage in bridges increases with the third power of gross vehicle weight. Thus, for example, a 60,000 pound vehicle causes of 27 times the fatigue damage of 20,000-pound vehicle. The technical underpinnings of this statement are provided in Appendix A, below.

16. Fatigue damage—which increases significantly as vehicle weight increases—appears to be the major cause of bridge deterioration,[5] with the exception of deterioration caused by natural disasters and ship collisions.

17. Although total failure (*i.e., collapse*) of the bridge structure is rare, fatigue cracking is often responsible for posting or closing the structure, reducing the number of lanes that are usable, or other temporary measures until repairs or corrective action can be taken. Cracks in the steel structure place it at risk to more serious damage.[6]

18. While there are other factors which affect bridge deterioration, under certain conditions and with regard

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[5] This includes deterioration of both metal and concrete components.

[6] Fisher, J.W. Fatigue and Fracture in Steel Bridges, Wiley Interscience, May 1984.

to certain parts of the bridge structure—for example, wind stress—these factors play relatively minor roles compared to the matters described above.

/s/ John W. Fisher
JOHN W. FISHER

Sworn to and subscribed
before me this 21st day
of August, 1984

/s/ Margaret A. Holzer
NOTARY PUBLIC

MARGARET A. HOLZER
Notary Public
Bethlehem, Northampton County
My Commission expires July 29, 1985
Member, Pennsylvania Association
of Notaries

APPENDIX A

Since bridge structures are subjected to loads at variable times and with different characteristics and magnitude, random variable loading results. This causes cumulative damage from the variable stress cycles. The linear damage rule of Miner is given by

$$\sum \frac{n_i}{N_i} = 1 \qquad (1)$$

The damage accumulation law ratio n_i/N_i is the incremental damage that results from the stress range cycles Sri that occurs n_i times.

The fatigue life of a given detail, Ni is related to stress range, Sri as

$$N_i = A.\, S_{ri}^{-3} \qquad (2)$$

where A is a function of the type of detail.

Hence, Miners law can be used to express cumulative damage as

$$F = \frac{1}{A} \sum n_i\, S_{ri}^{\,3} \qquad (3)$$

when equations 1 and 2 are combined.

Since stress range Sri in the bridge is proportional to Gross Vehicle Weight (i.e. $Sri = \alpha\beta GVWi$), then fatigue damage in bridges increases with the third power of the gross vehicle weight. Thus a 60,000 lb. truck causes 27 times the fatigue damage of a 20,000 lb. truck. Smaller trucks and automobiles generally cause stress cycles below the fatigue crack growth threshold and do not affect the fatigue life nor contribute significantly to fatigue damage.

AFFIDAVIT

[In Support of Respondents' Motion for Summary Judgment]

I, STEPHEN R. SIMCO, state that the following facts are true and correct to my personal knowledge.

1. I am employed by the Pennsylvaia Department of Transportation ("PennDOT"). I hold the position of Acting Chief Bridge Engineer, and have been in this position since 1983. I have been a bridge engineer with PennDOT since 1960.

2. I received my Bachelor of Science degree in Civil Engineering from Pennsylvaia State University in 1950. I am a registered professional civil engineer.

3. My responsibilities as Acting Chief Bridge Engineer at PennDOT include keeping PennDOT's bridge design and construction methods up to the "state of the art." I have primary responsibility within PennDOT for this task. I am very familiar with the bridge design and construction procedures used by PennDOT, and, as part of my job responsibilities, I keep abreast of the deveolpments in this field.

4. I have reviewed the Affidavit of Professor John W. Fisher. I agree in full with the analysis set out in Professor Fisher's affidavit (regarding bridge design, construction, deterioration and repair).

5. PennDOT applies the principles summarized in Professor Fisher's Affidavit in PennDOT bridge projects on Pennsylvania's highways. Thus, for example, projected heavy truck traffic is the primary factor taken into account in the design of bridges in Pennsylvaia. Use of bridges by cars causes no significant bridge deterioration.

6. In addition, PennDOT designs bridges which will be used by heavy trucks with, among other things, wider

lanes than would be the case if only cars were to use them.

/s/ Stephen R. Simco
STEPHEN R. SIMCO

Sworn to and subscribed
before me this 20 day
of August, 1984.

/s/ Earl M. Kerstetter
NOTARY PUBLIC

EARL M. KERSTETTER
Notary Public
Mt. Pleasant Mills, Snyder Co., Pa.
My Commission Expires April 18, 1987

AFFIDAVIT

[In Support of Respondents' Motion for Summary Judgment]

I, WALTER P. KILARESKI, state that the following facts are true and correct to my personal knowledge.

1. I am an Assistant Professor of Civil Engineering at Pennsylvania State University. I have held this position since 1980. My area of specialization is the field of pavement design and rehabilitation.

2. I am a registered professional engineer in the Commonwealth of Pennsylvaia. A short resume of my experience is attached as Exhibit "A" below.[1]

3. Certain design procedures are widely used by pavement engineers. These include the American Association of State Highway and Transportation Officials (AASHTO) procedure, the Asphalt Institute procedure, and the Portland Cement Association procedure.

4. The AASHTO design procedure is a result of a carefully executed experiment conducted at the AASHTO Road Test in the late 1950's and early 1960's, in which vehicles carrying different axle loads were run over various types of pavements for 2 years. AASHTO results are accepted as valid within the field of pavement design.

5. The AASHTO Road Test established, among other things, that as axle loads accumulate, pavement deteriorates.

6. Axle load refers to the load carried by a vehicle axle and transmitted to the pavement structure by that axle. Mixed axle loads can be equated in units called Equivalent Axle Loads (EAL's). One passage over a road segment of a single axle and tires with total weight of 18,000 pounds produces 1 EAL. All other axle loads

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[1] Exhibit "A", attached to this Affidavit, is incorporated in the Affidavit as though fully set forth.

are related to the 18,000 pound load in terms of that basic unit.

7. As the weight placed on an axle is increased, the number of EAL's produced by the axle increase exponentially. The greater the number of EAL's produced by a vehicle, the greater the pavement damage that vehicle will produce. This will increase the rate of serviceability loss for the pavement structure.

8. The pavement damage caused by automobiles is almost insignificant compared to that caused by trucks. Automobiles produce in the range of .0002 to .0004 EAL's. A 73,280 pound tractor trailer can (depending on how much weight is borne by each axle) produce approximately 5.2 EAL's.

9. The AASHTO Road Test established that as EAL's accumulate, a pavement's serviceability decreases to the point where the pavement can no longer function. When a pavement's serviceability has decreased to a certain level, the pavement should be overlaid with another layer of asphalt or portland cement concrete, or be rehabilitated in some other way, to keep it in usable condition. Overlaying and other rehabilitation methods entail significant construction costs.

10. Although other factors contribute to pavement deterioration (environmental factors, including weather), the deterioration which necessitates these rehabilitation expenditures is attributable primarily to heavy trucks.

11. I have conducted experiments which are very similar to the AASHTO Road Test, and confirm its results.

12. Other accepted design procedures—the Asphalt Institute and Portland Cement Association design procedures—also require that the designer predict the number of EAL's which the pavement will carry. That is, other accepted design procedures also treat expected truck traf-

fic as the central factor to be considered in pavement design.

13. The expected volume of automobile traffic is not taken into account, because it has a very insignificant effect on pavement thickness.

14. In addition to requiring thicker pavements, trucks require that roads have wider shoulders, and less steep grades, than if only cars used them. These alterations increase the cost of building a highway.

/s/ Walter P. Kilareski
WALTER P. KILARESKI

Sworn to and subscribed
before me this 21st day
of August, 1984.

/s/ Vickie M. Green
NOTARY PUBLIC

VICKIE M. GREEN
Notary Public
University Park, Centre Co., Pa.
My Commission Expires Jan. 3 1987

IN THE COMMONWEALTH COURT
OF PENNSYLVANIA

No. 267 C.D. 1983

AMERICAN TRUCKING ASSOCIATIONS, INC., et al.,
Petitioners

v.

ROBERT K. BLOOM, Secretary of the Department of Revenue, et al.,
Respondents

AFFIDAVIT

[In Support of Respondents' Motion for Summary Judgment]

I, Joseph H. Reohr, Jr., state that the following facts are true and correct to the best of my knowledge, information and belief.

1. I am employed by the New York State Department of Taxation and Finance. I hold the position of Assistant Director of the Central Office Audit Bureau. I have held this position since 1979. Since August 1, 1952 I have had an active role in the administration of the New York truck mileage tax contained in Article 21 of the Tax Law, Chapter 60, Consolidated Laws of New York.
2. In the capacity of Assistant Director my present responsibilities concern primarily the desk auditing of tax returns including those filed under the truck mileage tax. I have previously worked in other audit and processing areas of the truck mileage tax and am familiar with the administration of the truck mileage tax.
3. The truck mileage tax was first imposed in October of 1951.

4. The tax is imposed upon carriers who operate vehicles which alone or in combination have a gross weight in excess of 18,000 pounds and which operate on New York highways.

5. Carriers subject to the tax are required to obtain a permit and sticker for each vehicle operated in New York. Vehicles subject to the permit and sticker requirements include trucks, truck tractors, and trailers.

6. A permit and sticker is currently issued to each vehicle for a total fee of $5. The permit is valid for the period of the series in which issued, which is three years, and may be renewed currently for a fee of $2. The permit identifies the carrier's name and address; the make, type, year, and serial number of the vehicle; unloaded weight of the vehicle; and the maximum gross weight of the vehicle. The permit must be carried at all times in the vehicle and displayed upon the request of any authorized person. The sticker must be affixed to the vehicle to which it was issued. The information on the permit is also contained in the Department's computer file and available to authorized personnel via video display terminals.

7. The carrier to whom the permit is issued is responsible for filing the truck mileage tax report for the operation of that vehicle.

8. At the present time, approximately 82,000 carriers are registered with a total of 1,756,000 vehicles, which includes trailers.

9. Temporary permits valid for 30 days are issued by telegraphic facsimile for a fee of $5. Temporary permits automatically are converted to a permanent permit and sticker.

10. The truck mileage tax and the fuel use tax are reported on one report form. Returns are filed

quarterly unless the carrier has a truck mileage tax liability in excess of $100 per month, in which case truck mileage tax returns are filed monthly for that tax.

11. Failure to file reports or to pay assessments can result in suspension of the permits, which may then subject the carrier to a minimum fine of $100 if the vehicle is operated under a suspended permit. A minimum fine of $100 is also imposed for operating a vehicle without the required permit and sticker.

12. The Division of State Police is the principal enforcement agency of the truck mileage tax. Local police may also enforce its provisions.

13. Noncompliance in the case of a New York State commercially registered vehicle may result also in the suspension of the vehicle's New York State registration.

14. The carrier may compute the truck mileage tax by using one of two methods.

15. The unloaded weight method involves multiplying the total mileage in New York State, except certain thruway mileage, by a tax rate which is determined with reference to the empty weight of the power unit. New York State's gross weight limit for a tractor-trailer combination is 80,000 pounds. The maximum rate under the unloaded weight method is currently 2.7¢ per mile for trucks over 25,000 pounds unloaded or truck-tractors over 12,000 pounds unloaded.

16. The gross weight method involves trucks and tractor-trailer combinations with a maximum gross weight in excess of 18,000 pounds. When the truck is laden, the tax is computed using a rate per mile based upon the maximum gross

weight of the vehicle. When the truck is unladen, the rate is based upon the unloaded weight. The same rate table is used for laden and unladen mileage. The gross weight method uses a schedule of tax rates which differs from the schedule used under the unloaded weight method. The rate under the gross weight method applicable to tractor-trailer combinations with a gross weight of 78,001 to 80,000 pounds is currently 3.9¢ per mile.

17. Under the gross weight method the carrier must account separately for laden and unladen mileage. If tractor-trailer combinations are used, mileage must be kept for each different combination of tractor and trailer unless the carrier chooses the option of computing the tax with reference to the mileage of each trailer using the tax rate applicable to the combination weight of the trailer and the heaviest unloaded tractor.

18. The following numbers of personnel are involved in the administration and collection of the truck mileage tax:

Central Office Audit Bureau for desk audits	7
District offices for field audits	40
Processing Division for filing, mailing, computer	63

19. The desk audit involves a manual examination of reported combination weights by comparison with the weights indicated on the permits.

20. Mileage and declared weight are audited in the field audits.

21. Of the approximately 82,000 carriers registered, approximately 26,000 are located in New York State.

22. Of the 1.7 million vehicles registered, over one-half are trailers.

23. Carriers are required to maintain trip records for the movement of each truck or truck-tractor showing the point of origin, destination, date, vehicle permit number, laden and unladen miles.

24. The revenue yield for the truck mileage tax has been:

FYE 84	$37.8 million
FYE 83	35.5 million
FYE 82	36.9 million

25. The cost of administration was estimated at 5% of total revenue for FYE 83. The cost breakdown was as follows:

Assessment and collection	2.9%
Audit	2.1%

26. Enforcement problems include apprehending suspended carriers, currently 14% of all accounts; detecting overloading where trucks underreport weight.

27. Auditors are also located in Illinois to facilitate auditing.

28. In the 1950's the truck mileage tax was enforced by using weigh stations to check all trucks traveling within the state. This method was found to become less and less cost effective as willful violators would simply detour around weigh stations and road blocks.

/s/ Joseph H. Reohr, Jr.
JOSEPH H. REOHR, JR.

Sworn to and subscribed before
me this 8th day of August, 1984.

/s/ Thomas C. Sacca
NOTARY PUBLIC

THOMAS C. SACCA
Notary Public, State of New York
No. 4696948
Qualified in Albany County
Commission Expires March 30, 1985

AFFIDAVIT

[In Support of Respondents' Motion for Summary Judgment]

I, WARREN F. KONE, state that the following facts are true and correct to my personal knowledge, unless otherwise specifically stated:

1. I am employed by the Commonwealth of Pennsylvania Department of Transportation ("PennDOT"). I hold the position of Transportation Planner in PennDOT's Bureau for Strategic Planning, Transportation Analysis Section. I have held this position since 1972.

2. In this position I participate in special projects aimed at evaluating possible improvements to Pennsylvania's highway system, among other duties.

3. Federal law, specifically the Surface Transportation Act of 1982, requires each state to designate routes to be included in a highway system known as the "National Truck Network" ("NTN"). These routes must, in addition to meeting other requirements, provide reasonable access to the state's interstate highway system.

4. Following the passage, in 1982, of the Surface Transportation Act, Pennsylvania determined which of its roadways should be designated as NTN routes. I participated in this determination.

5. Pennsylvania's federally-approved NTN system includes the entire interstate system (1,502 miles); portions of other four-lane, divided, limited access highway (500 miles); and portions of four-lane, 48-foot minimum width roads (146 miles). Travel is also permitted for 2/10 mile off the NTN network for access to terminals and to food, fuel and rest facilities, if the access road has lanes at least 12′ wide.[1]

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[1] This specific information is derived from an official publication of the Department of Transportation entitled *Truckers' Handbook*, at p. 49 (Fourth Edition, January, 1984).

6. In the course of determining which of Pennsylvania's roadways should be designated as NTN routes (see paragraph 4 above), PennDOT reviewed data from various sources. One important source of information on roadway usage and condition which I, and others involved in this task, used, was data which had been gathered regarding highways located on Pennsylvania's "Priority Commercial Network" ("PCN").

7. The PCN consists, essentially, of about 11,600 miles of roadways made up of (1) roads which carry more than 500 trucks per day, and (2) connector roads of particular significance to industry.

8. The PCN was developed by PennDOT in order to identify the network of highways which is most frequently used by commercial truck traffic. The stated aim of the PCN projects was, generally speaking, to enable PennDOT to identify deficiencies which impede commercial truck travel. *See*, "Pennsylvania Priority Commercial Network Development and Applications," an official PennDOT publication (August, 1983).

9. I was asked, in connection with this case, to determine, among other things, how many bridges among those scheduled to be repaired or replaced with Axle Tax funds are located on the PCN. In order to do this, I directed PennDOT personnel under my supervision to run the computer program which identifies these bridges (and gives other information about them) against the program which identifies the PCN. (These computer programs are PennDOT business records).

10. The list generated by this process (see ¶ 9 above) shows that 235 of the bridges scheduled for repair or replacement using Axle Tax funds are located on the PCN.

11. This computer list (see ¶ 9 above) also shows that funds to be spent on improving or replacing the 235

bridges located on the PCN will total approximately $744 million; of this amount, $177 million will consist of Axle Tax revenues. Approximately seventy (70) of these 235 bridges located on the PCN are currently closed to heavy vehicles ("posted") or closed completely. (This number changes as projects are completed.)

12. The computer printout identifying "Axle Tax program" bridges on the PCN (See ¶ 9 above) also shows the weight limit to which these bridges currently are posted, whether the bridge is closed, average daily traffic, and the one-way length of detour around posted or closed bridges. I provided this information for use by experts and others in this litigation.

13. I have prepared a map showing the approximate location on the PCN of the presently posted and closed bridges which will be repaired or replaced with Axle Tax revenues. A copy of this map, labeled Exhibit A, is attached to this Affidavit and incorporated in the Affidavit by reference.

/s/ Warren F. Kone
WARREN F. KONE

Sworn to and subscribed
before me this 9th day
of August, 1984.

/s/ William B. Garman
NOTARY PUBLIC

WILLIAM B. GARMAN
Notary Public
Boiling Springs, Cumberland Co., PA
My Commission expires May 3, 1986.

PRIORITY COMMERCIAL NETWORK

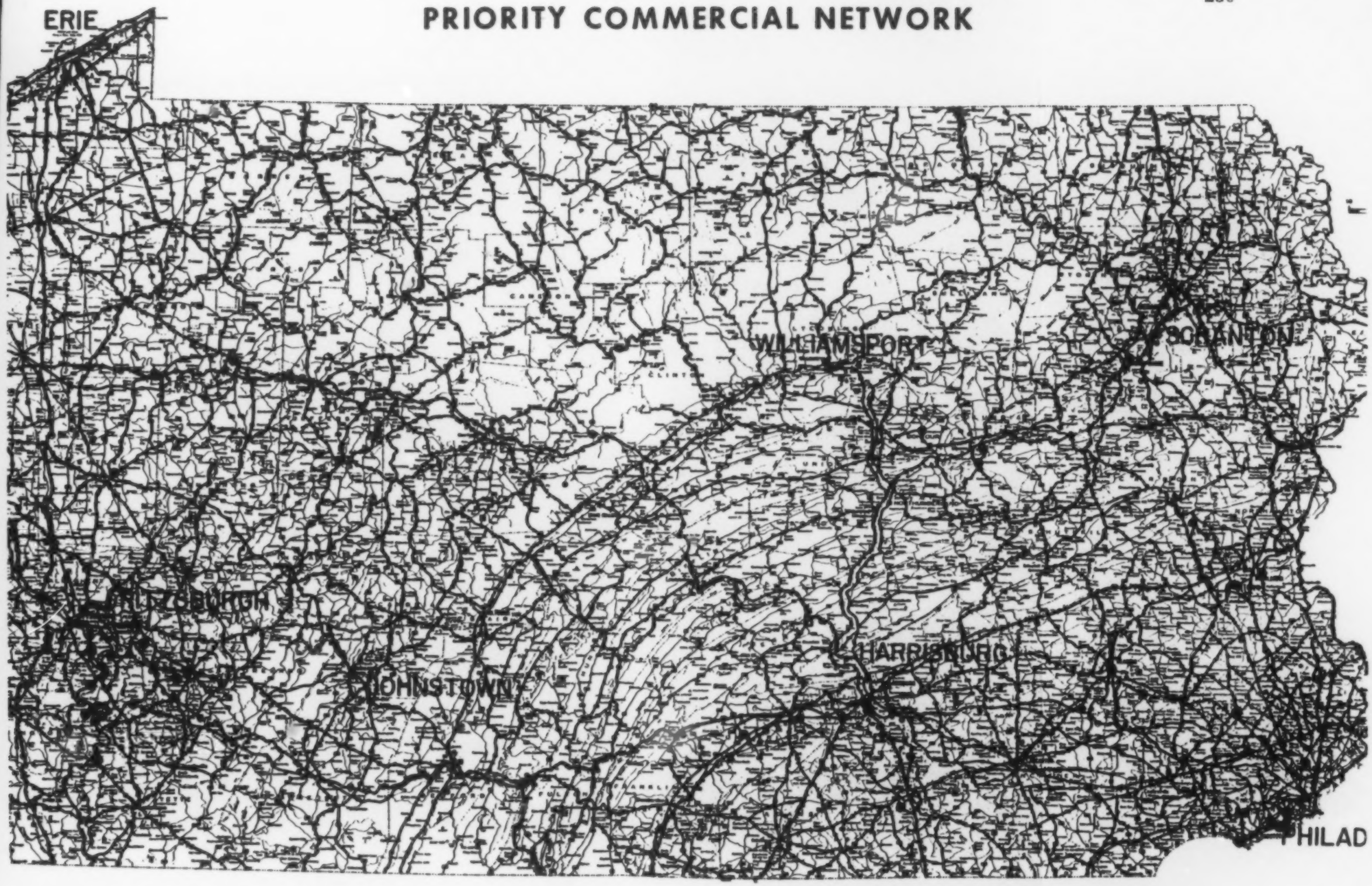

EXHIBIT "A"

BEST AVAILABLE COPY

AFFIDAVIT

[In Support of Respondents' Motion for Summary Judgment]

I, Linley Oberman, state that the following facts are true and correct to my personal knowledge:

1. I am employed by the Commonwealth of Pennsylvania Department of Transportation ("Department"). I hold the position of Manager of the Commercial Registration Section, within the Bureau of Motor Vehicles. I have held this position since 1981.

2. My current responsibilities include, among others, overseeing the administration of the Department's registration programs for commercial vehicles. These programs are (1) International Registration Plan (IRP), or "apportioned," registration of vehicles, and (2) conventional, or "non-apportioned" registration of vehicles.

3. I have determined, based upon the Department's computerized business records, that for approximately 65% of all non-apportioned-registered vehicles registered in Pennsylvania which are subject to the Axle Tax, Axle Tax payments exactly equal the registration fee reductions effected by Act 1982-234. I was able to make this determination using the Department's business records showing (1) number of vehicles registered in each vehicle weight class, and (2) number of axles possessed by vehicles registering in each vehicle weight class.

4. At my direction, staff in the Bureau of Motor Vehicles' Financial Analysis Section derived from the Department's computerized business records a tabulation showing number of truck registrations at 73,280 pounds or over in Pennsylvania, for the years 1978-1984. I reviewed this tabulation and determined that it was prepared correctly. I then provided it for use by experts and others in this litigation. This tabulation is reflected accurately in Exhibit R-7 of Mr. Arlee Reno's Affidavit (located at page R-25 of Mr. Reno's Affidavit).

5. I have prepared for use by experts and others in this litigation, from the Department's computerized business records, a tabulation showing annual mileage reported to the Department by 2,572 motor carriers registering vehicles in Pennsylvania under the IRP; this tabulation covers 16,174 power units of over 26,000 pounds registered weight. This tabulation is reflected accurately in Exhibit S-3 of Dr. Joseph Stowers' Affidavit. (Exhibit S-3 is located at page S-6 of Mr. Stowers' Affidavit.)

6. Pennsylvania requires by law that motor carriers which have their principal place of business in the Commonwealth register their locally-based fleet in Pennsylvania. See 75 Pa. C.S. § 1303(c).

/s/ Linley Oberman
LINLEY OBERMAN

Sworn to and subscribed
before me this 22nd day
of August, 1984.

/s/ Lois Erb
NOTARY PUBLIC

LOIS ERB
Notary Public
My Commission Expires August 18, 1986
Harrisburg, PA Dauphin County

AFFIDAVIT

[In Support of Respondents' Motion for Summary Judgment]

I, PAUL M. SLOAD, JR., state that the following facts are true and correct to my personal knowledge.

1. I am employed by the Commonwealth of Pennsylvania Department of Revenue ("Department"). I serve as Chief of the Licensing and Examinations Division, Bureau of Motor License Funds, within the Department. I have held this position since June, 1984.

2. Immediately prior to entering this position I was Assistant Chief of the Department's License and Bonding Division, Bureau of Accounts Settlement. I held this prior position for approximately five years.

3. In my current position I am responsible for overseeing the administration of certain taxes which are paid into the Commonwealth's Motor License Fund. These taxes include the Axle Tax, Liquid Fuels Tax, Fuel Use Tax, Oil Company Franchise Tax, "Interstate Bus Compart" Tax and Motor Carriers Road Tax ("MCRT").

4. The MCRT is a tax imposed upon motor carriers calculated on the amount of fuel consumed on Pennsylvania roads, with credit given against the MCRT for taxes paid at the pump on fuel purchased in Pennsylvania.

5. For Motor Carriers Road Tax purposes, motor carriers which operate vehicles travelling both in Pennsylvania and other states must, as a general matter, report their Pennsylvania and total vehicle mileage to the Department.

6. The exception to this general rule involves motor carriers operating vehicles registered in Pennsylvania which travel at least 90% of their miles in Pennsylvania, and which purchase enough fuel in Pennsylvania to cover their Pennsylvania mileage. Such motor carriers are not

required to report their mileage to the Department. Rather, they are permitted to submit to the Department an annual certification that their vehicles travel at least 90% of their miles in the Commonwealth, and that they purchase enough fuel in Pennsylvania to cover their Pennsylvania miles.

/s/ Paul M. Sload, Jr.
PAUL M. SLOAD, JR.

Sworn to and subscribed
before me this 21 day
of August, 1984.

/s/ Renee L. Smith
NOTARY PUBLIC

RENEE L. SMITH, Notary Public
Dauphin County, Harrisburg, PA
My Commission Expires May 12, 1985

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

No. 267 C.D. 1983

CLASS ACTION

AMERICAN TRUCKING ASSOCIATIONS, INC., et al.,
Petitioners,

v.

ROBERT K. BLOOM, Secretary of the Department of Revenue, et al.,
Respondents.

AFFIDAVIT OF DOUGLAS A. HUGHES IN OPPOSITION TO RESPONDENTS' MOTION FOR SUMMARY JUDGMENT

I, DOUGLAS A. HUGHES, state that the following facts are true and correct to my personal knowledge:

1. I am the Director of the Department of State Laws of American Trucking Associations, Inc., and as such I am serving as representative of Petitioner American Trucking Associations, Inc. in this litigation. A resume of my experience is attached hereto as Exhibit A to this affidavit.

2. Petitioners have filed a Motion for Summary Judgment in No. 267 C.D. 1983 because the Axle Tax at issue facially discriminates against interstate commerce in that: (a) although the Axle Tax technically applies to Pennsylvania-registered and foreign-registered vehicles, the legislature eliminated the financial effort of the Axle Tax upon Pennsylvania-registered vehicles by concurrently decreasing the registration fees for those vehicles

in amounts which offset the Axle Tax; and (b) the Axle Tax purports to be a flat tax and therefore, violates the commerce clause because it is not fairly related to the services provided by the state.

3. Respondents have filed their own Motion for Summary Judgment and oppose Petitioners' Motion because, they argue, the Axle Tax in no way discriminates against interstate commerce.

4. In support of their position, Respondents state many alleged "facts" in their brief and in numerous and lengthy affidavits.

5. I have reviewed Respondents' brief and affidavits in support of their motion and in opposition to Petitioners' motion.

6. The main "factual" assertions made by Respondents are that: (a) most carriers, including foreign carriers, can benefit from the lowering of registration fees in Act 234 "because interstate motor carriers can, as a general matter, choose the base state of registration for their trucks from among many states" (Respondents' brief at 18), *i.e.*, carriers can and do "shop" for the least expensive state for registration; (b) the lowering of registration fees in Act 234 was designed to curtail Pennsylvania's loss of registrations due to high registration fees; (c) Act 234 can legitimately increase the tax burden selectively on foreign-registered vehicles because the owners of those vehicles pay the least to Pennsylvania, *i.e.*, no registration fee, and therefore they would otherwise get a "free ride" on Pennsylvania roads; and (d) heavy foreign vehicles cause more damage to Pennsylvania's bridges than Pennsylvania's heavy vehicles thereby justifying a greater contribution to the bridge improvement program created by Act 234.

7. Each of the above "factual" assertions, and the more detailed alleged "facts" and opinions on which they

are based, are disputed by Petitioners and are incorrect and misleading.

8. Without conceding the relevance of Respondents' assertions, they will be addressed below.

BACKGROUND

9. Every state maintains a system for registering trucks annually and imposes fees and taxes in conjunction with such registration.

10. Certain agreements have been devised and exist among states in connection with truck registrations.

11. Pennsylvania has reciprocity agreements with 20 states and the District of Columbia. All six states bordering on Pennsylvania—Delaware, Maryland, New Jersey, New York, Ohio and West Virginia—have reciprocity agreements with Pennsylvania. Under these agreements vehicles engaged in interstate travel which are properly registered in any of the jurisdictions with which Pennsylvania has reciprocity agreements may travel interstate in Pennsylvania without paying registration fees to Pennsylvania. By the same token, vehicles properly registered in Pennsylvania and engaged in interstate travel may travel in any of the jurisdictions with which Pennsylvania has reciprocity agreements without having to pay any registration fees to those jurisdictions. "Properly registered" in this context means that the vehicles are registered where they are operationally based. Of the 20 states with which Pennsylvania has reciprocity agreements, four have been recently admitted to the International Registration Plan (IRP), first apportionment to occur in 1985. *See* paragraph 13, below.

12. The allegation on page R-4 of the Reno affidavit and in paragraph 4 of the same affidavit—that "Pennsylvania grants full reciprocity for registration fee purposes to vehicles registered in [21 states, the District of Columbia and 6 Canadian provinces]" is incorrect in that the

number of states with which Pennsylvania has reciprocity is incorrect and this reciprocity is limited to *interstate* travel; *i.e.*, reciprocity would *not* be granted to a New Jersey vehicle performing Pennsylvania *intrastate* transportation.

13. In addition to reciprocity agreements, Pennsylvania belongs to the IRP, a multi-jurisdiction agreement, whereby vehicles, if properly registered in any of the member jurisdictions, pay apportioned registration fees to each of the IRP jurisdictions in which the vehicles travel in the year. The apportioned fee is based upon the proportion of miles traveled in those jurisdictions to the total miles traveled by the vehicles. For example, vehicles based in Kentucky (a member of the IRP) which travel 20% of their miles for the year in Pennsylvania, would pay 20% of the Pennsylvania registration fee.

14. The listing of IRP members from among those states belonging to the Multistate Reciprocity Agreement on page R-8 of the Reno affidavit is incomplete in that it does not include Florida and Michigan. In addition, both paragraph 5 and the first sentence concerning the IRP on page R-6 of the Reno affidavit are incorrect in that the IRP membership does not consist of Pennsylvania, *27* other states and the province of Alberta but rather, as of the date Mr. Reno signed his affidavit, Pennsylvania, *30* other states and the province of Alberta.

15. Pennsylvania is not a party to the Uniform Vehicle Registration Proration and Reciprocity Agreement (UPRA). However, all UPRA states, except Alaska and New Mexico, either have a reciprocity agreement with Pennsylvania or are also members of the IRP. Pennsylvania allows interstate vehicles registered in Alaska and New Mexico to travel in the Commonwealth without paying Pennsylvania registration fees, even though it does not have reciprocity agreements with either Alaska or New Mexico.

16. Pennsylvania is not a party to the Multistate Reciprocity Agreement (MRA). However, all MRA members either have a reciprocity agreement with Pennsylvania or are members of the IRP.

17. Therefore, Pennsylvania has some sort of registration fee agreement or arrangement with the District of Columbia and all states except Alaska, Hawaii and New Mexico. Additionally, Pennsylvania allows interstate vehicles registered in Alaska, Hawaii and New Mexico to travel in the Commonwealth without payment of Pennsylvania registration fees, even though there is no formal reciprocity agreement.

RESTRAINTS ON THE LOCATION OF REGISTRATION

18. Respondents state that the decreases in registration fees in Act 234 benefit more carriers than just Pennsylvania carriers because foreign carriers can shop for the best, *i.e.*, least expensive, state of registration and are free to register their vehicles in Pennsylvania. *See, e.g.*, Respondents' brief at 6-8, 18-19 and paragraphs 17 and 18 of the Reno affidavit.

19. If Respondents' position were correct, all interstate carriers would register in the low fee states (*i.e.*, Alaska, Delaware, New Mexico and Oregon) and none would register in the high fee states (*i.e.*, Arizona, Illinois, Iowa, Kansas and Wisconsin), which, of course, is not the case.

20. Rather, the vast majority of carriers are not free to shift their truck registrations to any other state at will because of both legal and economic restraints.

21. More specifically: (a) under the IRP and generally under reciprocity agreements vehicles can only be registered where the carrier has an established physical place of business; (b) some states, including Pennsylvania, mandate that locally-based trucks be registered in

that state if the carrier's principal place of business is there; and (c) even if a carrier has a choice of states for registration, that choice is influenced not only by registration fees but by ad valorem property tax costs and the reciprocity such registrations would receive in other states of travel.

22. It is probable that of the approximately 50,000 motor carrier operators serving Pennsylvania, less than 10% have any option of shifting their registrations because they do not have business locations, facilities and personnel in other states as set forth below.

23. Under the IRP provisions "base state" [1] means the state "where the registrant has an established place of business, where mileage is accrued by the fleet and where operational records of such fleet are maintained or can be made available" under special arrangements. *See* International Registration Plan, Article II.F. "Established place of business" is defined as:

> a physical structure owned, leased or rented by the fleet registrant the location of which is designated by street number or road location; and which is open during normal business hours; and in which are located:
>
> (1) a telephone or telephones publicly listed in the name of the fleet registrant,
>
> (2) a person or persons conducting the fleet registrant's business, and

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[1] Respondents have confused the issue by using the term "base state" in their brief in different ways without thorough explanation. On page 6, for example, they describe the term as meaning "the state which the carrier views as its 'home state'" while on page 8 they define the term by referencing the IRP; but they still have failed to define the term as provided in the IRP and as used in general context.

(3) the operational records of the fleet (unless such records can be made available in accordance with the provisions of Article XIV.A.2).

International Registration Plan, Article II.J.

24. Registration reciprocity granted to foreign registrations under non-IRP agreements is most commonly granted only to trucks properly registered in the "base state." In this context, "base state" means the place from or in which the vehicle is most frequently dispatched, garaged, serviced, maintained, operated or otherwise controlled by the registrant. This is true of all reciprocity states with the exceptions of Florida, Maine (semitrailers only) and Delaware. Businesses incorporated in Florida and Delaware may register their vehicles in those states through a local agent without complying with the other restrictive criteria discussed above. The extent to which these Florida and Delaware registrations are granted reciprocity, however, is limited by the terms of the reciprocity agreements.

25. Interstate motor carriers cannot register their vehicles in one state and operationally base their vehicles in another state since the state in which the vehicles are operationally based will refuse to recognize the registration under their reciprocity provisions. Pennsylvania has recently strengthened its laws in this area through amendments in 1983 (P.L. 122) and 1984 (Act 30) to Section 1301 of its Vehicle Code.

26. To coin Respondents' word, carriers can only "shop" for registration where they have an established place of business, or in the case of Florida and Delaware, if they are incorporated in one of those states.

27. Respondents are incorrect in stating that "[t]he steady, long-term trend has been toward larger national carriers which operate in many states." Stowers affidavit, paragraph 8. The long-term trend has been towards smaller carriers on the average. The number of

regulated interstate property carriers, for example, has increased 82% from 15,144 in 1973 to 27,517 carriers authorized in 1983 according to the annual reports of the Interstate Commerce Commission while the population of vehicles used by these carriers and their average revenues have not experienced comparable growth. The vast majority of these carriers have little, if any, choice in where their vehicles are registered.

28. Paragraph 3 of the Stowers affidavit also is incorrect in stating that anyone can register vehicles under the International Registration Plan subject only to the conditions and exceptions identified in Appendix S-1. That appendix explains the definition of "apportionable vehicle" defined in ARTICLE II.C of the IRP, but completely ignores the constraints on registration as set forth in paragraph 23 above. The same errors are made in paragraphs 3.b and 5 of the Stowers affidavit regarding registration in the reciprocity states, and in paragraph 3.c which suggests that any carrier can register a vehicle in Pennsylvania regardless of its actual base of operations. While Petitioners concede that Pennsylvania technically might issue such a registration to a carrier, that registration would not allow operation of the vehicle in the carrier's actual base state of operation or in most of the states with which Pennsylvania has reciprocity agreements.

29. Mr. Stowers' affidavit is again incorrect in relying upon Exhibit S-2 purportedly to demonstrate the carriers' alleged ability to shift their state of registration by showing an excessive abundance of truck registrations in states allegedly having low registration fees. Exhibit S-2 compares 1984 registration fees with 1980 population numbers and 1980 truck tractor registration numbers. Between 1980 and 1984, however, registration fees were changed in four of the listed states. In addition, the Respondents' conclusion rests upon the assumption that truck tractor registrations parallel population changes,

and yet truck tractor registrations according to their source (Table MV-9, *Highway Statistics*) have fallen in the last three years for which data is available, and have yet to regain the truck tractor population size in the United States in 1976. Truck population and the level of trucking activity, is a function of industrial activity in the United States, and has never varied directly with population changes.

30. Also incorrect is Respondents' position that carriers select states for registration based solely upon level of registration fees. *See, e.g.*, Exhibit R-5 of the Reno affidavit which compares only the registration fees of 20 states. For those few carriers that have places of business in more than one state and, therefore, have some flexibility in registration, the economic focus is on: (a) registration costs; (b) ad valorem property tax costs; and (c) availability of reciprocity. Of the 20 states listed in Exhibit R-5, 12 states impose an ad valorem property tax on vehicles ranging from a low of $450.17 (West Virginia) to a high of $3,852.00 (Rhode Island) and averaging $1,097.83. For the 20 state group in Exhibit R-5, the average 78,000 pound registration fee plus property tax cost is actually $1,347.30, considerably higher than the Pennsylvania cost of $936.00.

31. An example of the legal restraints upon registration is pointed out by Respondents themselves as paragraph 6 of the affidavit of Ms. Oberman states: "Pennsylvania requires by law that motor carriers which have their principal place of business in the Commonwealth register their locally-based fleet in Pennsylvania. See 75 Pa. C.S. § 1303(c)." Also, Mr. Reno states that states require carriers with vehicles "based in their state to register and pay a fee for registration." *See* Reno affidavit, paragraph 3, and the first paragraph of Appendix R-2, page R-3.

PENNSYLVANIA'S REGISTRATION FEES ARE NOT AMONG THE HIGHEST AND THERE ARE OTHER SUBSTANTIAL CAUSES OF THE DECLINE OF VEHICLE REGISTRATIONS IN PENNSYLVANIA AND OTHER STATES

32. Respondents assert that: (a) Pennsylvania's registration fees were among the highest in the country; and (b) that Pennsylvania lost registrations to other states when it increased fees in 1980.

33. Respondents' assertions above, and the more detailed "facts" upon which they are based are untrue.

34. Respondents' initial factual premise regarding the level of Pennsylvania's registration fees as compared to other states is incorrect in that:

(a) the highest registration fee states are Arizona, Illinois, Iowa, Kansas and Wisconsin;

(b) Pennsylvania registration fees were not higher than the fees of all six bordering states as of July, 1984. Furthermore, the listing in Exhibit R-3 of the Reno affidavit for New Jersey fees is incorrect and for New York it is incomplete and inaccurate because it does not take into account the higher vehicle registration fees of household goods carriers; and

(c) Respondents incorrectly rely upon Exhibit "A" of the Gross affidavit, allegedly comparing Pennsylvania's 1981 registration fees to such fees in the other 49 states and the District of Columbia for truck-tractors in 80,000 pound combinations. The Exhibit, however, is grossly misleading. It was admittedly put together from four different sources including "telephone calls," and there are 22 footnotes creating a total of 45 "exceptions" to the 51 registration fees listed in the Exhibit. More specifically, the Exhibit has the following blatant errors:

(i) the fees shown for the following eight states are incorrect: Arizona, California, Colorado, Hawaii, Illinois, Montana, Vermont, and Wyoming;

(ii) footnote 1 should not be identified with Arkansas and Pennsylvania;

(iii) footnotes 2, 10, 13 and 22 identify fees in four states that were increased in 1981 and, on the table, the lower fee is shown. Because Pennsylvania also increased its fees in 1981 and the increased Pennsylvania fee is shown on this table, consistency in the Exhibit demands that the fees shown for Wisconsin be $1,700, for North Carolina be $920, for Mississippi be $1,368 and for Idaho be $120;

(iv) footnote 4 should likewise be shown for Arizona, California, Colorado, Montana, Washington, and Wyoming;

(v) footnote 6 identifies the jurisdictions registering on an unladen weight basis but ignores the trailer registration cost which is substantial in all those jurisdictions;

(vi) footnote 7 should also be identified with Arizona, California, Montana, Nebraska, Nevada, Utah, Washington, and Wyoming; and

(vii) footnote 17 should be identified with Alaska, California, District of Columbia, Nevada, Ohio, and Wyoming.

Exhibits A also omits relevant facts in misleadingly attempting to show the Pennsylvania fee at the highest amount and other states at the lowest amount. For example: (a) in six states (see footnotes 9, 11, 13, 16, 19 and 20) different fees are charged to private and for-hire carriers, but the exhibit displays the lower of these fees in all six cases; and (b) property-type taxes collected as an element of vehicle registration are found in nine states, but that component is listed for only four states.

Furthermore, as Mr. Reno states on page R-14 of his affidavit, "Property taxes are assessed on vehicles in twenty-seven states, although not in Pennsylvania." These property taxes are, of course, to be considered by those few carriers that have options as to where to register.

35. Mr. Stowers also is incorrect in paragraph 11 of his affidavit in which he comments on Pennsylvania's registration fee increases in 1976 and 1980, proudly noting that "these fee changes were distributed to all in-state and out-of-state IRP carriers on an equal basis" under the IRP. Mr. Stowers apparently does not know that Pennsylvania only became a member of the International Registration Plan on September 15, 1982.

36. Mr. Reno's affidavit is incorrect and grossly misleading in stating, based upon Exhibit R-6 thereto, that from 1978 to 1982 Pennsylvania lost truck registrations to the six surrounding states, in that: a) although the registration numbers in the Exhibit were obtained from *Highway Statistics*, an annual publication of the Federal Highway Administration ("FHWA"), Mr. Reno failed to report in his affidavit that for 1981, the year in which a decrease in Pennsylvania registrations is shown, the FHWA made the following relevant observation:

> The figures in this column may vary substantially from the numbers shown for prior years. This results from new information and updating of the estimating procedures, and *is not because of substantial vehicle registration changes during 1981*;

(emphasis added); b) even if the Exhibit were accurate, it depicts five of the six surrounding states also as losing significant numbers of truck registrations during the same period; and, while Pennsylvania's share went from 24.97% to 21.94%, Ohio's portion went from 37.51% to 32.38%; and c) if there were actual losses in registrations; these losses might be attributed to loss of business

among carriers, cutbacks, carriers' going out-of-business, the general declining state of the economy, consequences of deregulation of the industry, shippers changing to other methods of transportation or a mix of these various factors.

RESPONDENTS' ALLEGATION THAT FOREIGN-REGISTERED VEHICLES DO NOT CARRY A FAIR SHARE OF THE TAX BURDEN IS UNTRUE AND ACT 234 IMPOSES AN ADDITIONAL FINANCIAL BURDEN ONLY UPON INTERSTATE COMMERCE

37. The assertion running through Respondents' brief and affidavits (*see*, e.g., brief at 9; Reno affidavit, paragraph 6) that foreign-registered vehicles, especially vehicles operated in Pennsylvania under registration reciprocity, pay less than their fair share and somehow get a "free ride" on Pennsylvania roads is untrue.

38. These foreign-registered vehicles do pay 100% registration fees to the states in which they are registered for which they receive (a) the privilege of travel in their states of registration and (b) the privilege of interstate travel in the reciprocating states.

39. That registration fee payment is not unlike the 100% registration fee payment Pennsylvania-based carriers make to Pennsylvania for which they receive (a) the privilege of travel in their state of registration, *i.e.*, Pennsylvania, and (b) the privilege of interstate travel in the states with which Pennsylvania has reciprocity agreements. By concurrently instituting the Axle Tax and lowering Pennsylvania vehicle registration fees, Act 234 imposes an additional financial burden *only* upon interstate commerce.

40. A vehicle base-registered in an IRP jurisdiction pays a proportionate registration fee to all IRP jurisdictions in which it travels. Hence, a foreign-registered ve-

hicle which is registered in an IRP jurisdiction other than Pennsylvania, may travel a substantial number of its miles in Pennsylvania, entitling Pennsylvania to a large, proportional registration fee. Conversely, a vehicle base-registered in Pennsylvania, will pay only a small percentage of the Pennsylvania registration fee if it travels a substantial number of miles in other IRP jurisdictions. (with the exception noted in paragraph 41, below).

41. The allegation on page R-7, reiterated on page R-19, of the Reno affidavit—that "[i]n most IRP states including Pennsylvania, the base state registration fee is applied to that portion of the mileage accumulated in non-IRP states"—is misleading in that such mileage is accrued to the base jurisdiction *only* if reciprocity is in effect. This is clearly stated in Article II.L of the IRP as follows:

> L. "In-Jurisdiction Miles" means the total number of miles operated by a fleet of proportionally registered vehicles in a jurisdiction during the preceding year. In those cases where the registrant operated a fleet of proportionally registered vehicles in jurisdictions that require no apportionment *and grant reciprocity*, the base jurisdiction may add such miles to the in-jurisdiction miles.

(emphasis added).

42. In addition to being required to pay registration fees to the state(s) in which they register their vehicles, carriers pay various taxes and user fees to the various jurisdictions in which their vehicles travel. In Pennsylvania, in addition to the Axle Tax, foreign-registered vehicles are subject to, among other things: (a) special hauling permit fees; (b) the Fuel Use Tax; (c) the Motor Carriers' Road Tax; (d) the Oil Company Franchise Tax; (e) the Gross Receipts Tax; and (f) the Liquid Fuel Tax. *See* Exhibit "B" to Respondents' brief,

paragraph 64. The Axle Tax represents an additional financial burden which impacts upon interstate commerce *only*.

43. Although the vast majority of states imposing a gross receipts tax do so only on intrastate activity, Pennsylvania imposes the tax on both intrastate and interstate activity. Hence, the allegation on page R-14 of the Reno affidavit, stating that "[o]ther taxes such as gross receipts taxes on for-hire carriers are levied in sixteen states, including Pennsylvania," is misleading because it ignores the fact that in 14 of the 16 states the gross receipts tax is imposed only on *intrastate* activity. The remaining two states are New York and Pennsylvania. In New York, the tax is payable in exchange for an exemption from net income tax for transportation corporations.

44. Contrary to the lower numbers consistently stated by Mr. Reno (see Reno affidavit, paragraph 7 and pages R-9 and R-10), Pennsylvania and *45* (not 39) other states collect fuel usage taxes. Similarly uninformed are the Reno affidavit statements on pages R-9 and R-10 that Florida, Rhode Island, Idaho and Ohio do not have fuel use reporting laws. In each case the exact opposite is true. Additionally, Ohio never "substituted" an axle mile tax for its fuel tax.

45. In juxtaposing "registration fees" with Pennsylvania's "fuel usage tax," paragraph 19 of the Reno affidavit is misleading by making it seem as if fuel usage tax is tied to registration fees. The second sentence of paragraph 19 states, "a truck which pays less in registration fees for the same travel in Pennsylvania also pays less in total fees (registration plus fuel taxes) for the same travel in Pennsylvania." While a truck which pays less in registration fees for the same travel in Pennsylvania may pay less in total fees, i.e., Respondents' idea of total fees—registration fees plus fuel tax—this lesser total amount exists *only* because of the payment of less

in registration fees and only because of the reciprocity on registration fees freely negotiated by Pennsylvania with other states. It has nothing to do with fuel usage tax which is the same for similar trucks traveling the same number of miles in Pennsylvania regardless of where the trucks are registered.

46. Fuel usage tax paid by foreign-registered vehicles is based upon gallons of fuel consumed in Pennsylvania just as it is for Pennsylvania-registered vehicles. Fuel usage tax has nothing to do with registration fees which are: 1) paid to Pennsylvania on behalf of Pennsylvania-registered vehicles traveling intrastate or traveling interstate to jurisdictions with which Pennsylvania has reciprocity agreements; 2) paid to jurisdictions other than Pennsylvania on behalf of foreign-registered vehicles registered in jurisdictions with which Pennsylvania has reciprocity agreements; 3) paid proportionally to Pennsylvania and other IRP jurisdictions on behalf of vehicles base-registered in Pennsylvania, traveling in state and in other IRP jurisdictions; and 4) paid proportionally to Pennsylvania and other IRP jurisdictions on behalf of vehicles base-registered in IRP jurisdictions other than Pennsylvania.

47. Although some states "collect usage fees based upon a carrier's miles of travel within the state and the weight of the vehicle(s) doing the travel," as stated in paragraph 9 of the Reno affidavit and discussed again in the first paragraph on page R-12 and in Exhibit R-2 of the Reno affidavit, almost all of these taxes have substantial exemptions, *e.g.*, New York's exemption of household goods carriers, Kentucky's exemption of coal haulers and Colorado's exemption of farm trucks. These taxes are paid for the actual distance traveled within the states, as admitted by Respondents, while the Axle Tax is not (except for vehicles traveling less than 2,000 miles).

48. Furthermore, although these taxes or "usage fees" collected by other states "are collected from all carriers no matter where registered," (with the exception of exemptions such as those noted in paragraph 47), it is not true that this fact makes them in any way "like Pennsylvania's axle tax." Reno affidavit, paragraph 9. The Axle Tax has practically no financial effect upon non-apportioned Pennsylvania-registered vehicles due to the reduction in registration fees for those vehicles in amounts substantially equal to the amount of the Axle Tax paid. If the Axle Tax legislation (Act 234) can be said to grant any exemption, it would be an exemption to intrastate Pennsylvania vehicles, by virtue of the registration fee reductions of Act 234.

49. It is not true as stated in paragraph 12 of the Reno affidavit that "[a]ll IRP registered trucks which travel in Pennsylvania pay the Pennsylvania axle tax on an equal basis, whether registered in Pennsylvania or in other IRP member states." *See*, also, the last three lines of page R-19 and the first two lines of R-20 where this allegation is reiterated in similar terms. On the contrary, an 80,000 pound, 5-axle, IRP truck, traveling 20,000 miles in Pennsylvania pays an Axle Tax of $180.00 which calculates to $.009 per mile. The same size IRP truck with the same number of axles traveling 2,000 miles in Pennsylvania pays an Axle Tax of $180.00 or $.09 per mile.

50. In 1982, I conducted a study of interstate motor carrier travel in Pennsylvania embracing 188,978 trucks (exceeding 17,000 lbs. gross vehicle weight) operated by 6,854 interstate motor carriers which traveled over 13 billion miles everywhere including more than 1 billion miles in Pennsylvania. The average Pennsylvania-based interstate truck traveled 5.2 times more miles in Pennsylvania than the non-Pennsylvania-based interstate trucks. Of the 953 Pennsylvania-based carriers in the study, 46.3% (442/953) average over 20,000 Pennsyl-

vania miles of travel per truck while only 2.7% (161/5901) of the non-Pennsylvania-based carriers exceeded 20,000 Pennsylvania miles per truck. On the other hand, of the 953 Pennsylvania-based carriers, only 4.0% (36/953) traveled under 2,000 miles per truck in Pennsylvania contrasted with 49.5% (2,921/5,901) of the non-Pennsylvania-based carriers. If purely intrastate carriers were added to the sample, the contrast would be even more pronounced when compared to non-Pennsylvania-based trucks. The example vehicles cited above are typical of the trucks actually traveling in Pennsylvania today.

51. With regard to the statement on page R-12 of the Reno affidavit—that "Pennsylvania's axle tax is prorated by mileage (up to 2,000 miles) like weight-distance taxes"—in actuality, unlike any of the usage or third structure taxes of other states as enumerated in the Reno affidavit, the full 100% maximum Axle Tax is paid to Pennsylvania *prior* to actual use for the privilege of future use. Proration does not occur until months after the close of the "usage year," most commonly at least 15 to 18 months after the tax was paid, and only after completion of a complex administrative procedure requiring extensive record keeping and multiple filings with the state agency. Many carriers have had their proration applications, and, therefore, their rebates, refused due to technical non-compliance with these complex procedures.

52. The Axle Tax is prorated by mileage only up to, but not including, 2,000 miles. Thus, a truck traveling 2,000 miles in Pennsylvania pays as much in Axle Tax as a truck traveling ten, twenty, thirty or more miles as much in Pennsylvania.

53. Average Axle Tax cost per mile calculations are influenced by the following two variable factors only:

(a) number of axles, and

(b) miles of Pennsylvania travel.

The "example" states listed on pages R-12 of the Reno affidavit are all contiguous to Pennsylvania which, based upon truck usage, will diminish the "average" Axle Tax cost per mile because of both factors. The average vehicle population traveling in Pennsylvania from these states will include a higher proportional segment of vehicles with two and three axles than the foreign-based vehicle population generally, thereby reducing the "average" Axle Tax cost, and these vehicles will travel more Pennsylvania miles than vehicles from more distant states. If the average costs for all vehicles from all states were shown in this affidavit, I am confident that, because of the two factors identified above, the lowest average cost per mile would be found for Pennsylvania-based trucks (under 0.5¢/mile) and the average cost would increase to almost 9¢ per mile for vehicles from the most distant states as these would be almost always vehicles with 5 or more axles and have low Pennsylvania mileage.

HEAVY TRUCK TRAFFIC IS NOT THE ONLY SUBSTANTIAL CAUSE OF BRIDGE DETERIORATION AND, IN ANY EVENT, BRIDGE DETERIORATION IS NOT MORE ATTRIBUTABLE TO FOREIGN-REGISTERED HEAVY TRUCKS THAN TO PENNSYLVANIA-REGISTERED HEAVY TRUCKS

54. The affidavits taken on behalf of Respondents by Walker P. Kilareski, Stephen R. Simco and John W. Fisher are concerned with the subject matter of road and bridge deterioration.

55. The main cause of road and bridge deterioration is not, as respondents say, heavy truck traffic. Indeed, one of the affiants on this issue, Mr. Kilareski, testified at the hearing relating to the marker decal fee in *American Trucking Associations, Inc. v. Bloom*, No. 315 C.D. 1982 (Pa. Commw. Oct. 17, 1983), at which I was present, that major causes of road and bridge deterioration

are chemicals, temperature, weather, moisture intrusion and environmental factors in general. N.T. 160-164. An additional Commonwealth witness, Barry A. Falkenstine, agreed with Mr. Kilareski's testimony. N.T. 170. In addition, deterioration also results from inadequate road and bridge design in the first place. N.T. 158, 159, 162-63, 168. The Notes of Testimony cited are attached hereto as Exhibit B.

56. Respondents' affiant and expert, Walter P. Kilareski, has written several articles and other published material on the subject of road and bridge deterioration. He has stated:

> Today's highway and bridge engineers are faced with a voluminous number of bridge decks that are deteriorating at an accelerated rate. Bridge decks that are expected to perform adequately for 30 years or more have shown signs of extensive deterioration after 5 years of service. Recent studies indicate highway departments alone pay over 70 million dollars a year for the repair of bridge decks, and this expenditure is swelling at a rapid pace.
>
> *Premature deterioration, in most cases, can be attributed to the corrosion of bridge deck reinforcing steel.* The corrosion process is an electro-chemical mechanism by which a metal is reduced to its natural ore. *The increased use of deicing materials that has taken place in the past decade is usually blamed for this condition.* Sodium and calcium chlorides, in particular, enter into solution with the moisture present on bridge decks. This solution permeates the concrete deck and forms an electrolyte which is a necessary component for corrosion. As the reinforcement steel corrodes, the red rust expands in volume. This expansion in volume exerts internal forces on the concrete. When the tensile strength of the concrete is exceeded, cracking and spalling result.

Kilareski, W.P., "Epoxy Coatings for Corrosion Protection of Reinforcement Steel," *Chloride Corrosion of Steel in Concrete*, ASTM STP 629, D.E. Tonini and S.W. Dean, Jr., eds., American Society for Testing and Materials, 1977, pp. 82-88, 82-83 (emphasis added).

57. It is well-known that major causes of road and bridge deterioration are chemicals, various environmental factors and inadequate design and construction. The affidavit of Richard A. Lill, Highway Engineer and Assistant Director, Economics and Taxation Department, American Trucking Associations, Inc., explains why Respondents are incorrect in contending that heavy trucks are primarily responsible for road and bridge deterioration based on interpretations of the AASHO road tests.

58. There is no evidence that foreign-registered heavy vehicles cause more damage to roads and bridges than Pennsylvania-registered heavy vehicles. Indeed, at the hearing relating to the marker decal fee, the Commonwealth's own witnesses, Messrs. Kilareski and Falkenstine, established that a foreign-registered vehicle burdens the roads of Pennsylvania in exactly the same manner and amount as a Pennsylvaia-registered vehicle of similar size and weight. N.T. 167, 177, attached hereto as part of Exhibit B. Foreign-registered trucks are not generally heavier than Pennsylvania-registered trucks; Pennsylvania-based vehicles need only comply with the very liberal Pennsylvania axle weight limits and interstate vehicles must comply with the lower axle weight limits imposed by most of the other states through which they travel. Axle weight, of course, is one of the principal concerns of highway engineers in the design, construction and maintenance of highway pavements (see affidavit of Richard A. Lill).

59. Additionally, Pennsylvania-registered vehicles use Pennsylvania roads and bridges more than foreign-

registered vehicles—accounting for approximately 65% of the total miles traveled by all vehicles over 26,000 lbs. GVW on the roads of the Commonwealth in 1979 (the latest available figures of the Department of Transportation as of June, 1983). *See* Petitioners' Exhibit 1 to the Transcript of Proceedings of June 16 and 17, 1983 in *American Trucking Associations, Inc. v. Bloom*, No. 315 C.D. 1982 (Pa. Commw. Oct. 17, 1983), attached hereto as Exhibit C.

60. Hence, paragraph 15 of Mr. Stowers' affidavit is incorrect in placing a high degree of the blame for "damage to Pennsylvania highways and bridges" upon the out-of-state motor carriers because of their substantial use of Pennsylvania highways and because, on average, they "operate heavier equipment in Pennsylvaia than Pennsylvania based carriers."

61. Respondents are incorrect in stating that "[t]he vast majority of heavy vehicles registered in Pennsylvania travel a substantial portion of their mileage outside of Pennsylvania" (Stowers affidavit, paragraph 13) and that "large combination trucks do most of their travel outside their base states." Reno affidavit, page R-26. The *Truck Inventory & Use Survey*, extensively cited by Respondents, is a component study within the *Census of Transportation* conducted periodically by the U.S. Department of Commerce. The survey shows that many large and heavy trucks are substantially local in nature. The most recent data (1977) for heavy trucks (*i.e.*, over 26,000 lbs. GVW) registered in Pennsylvania shows that 62% of those Pennsylvania trucks accrue between 75% and 100% of their miles in Pennsylvania and an additional 16% of those trucks accrue at least half of their miles in Pennsylvania. The data also shows that nationally, of the 1,432,300 trucks exceeding 26,000 lbs. GVW (includes 95% of all combination trucks), 1,002,300 trucks (70%) accumulated at least 75% of their miles in their base states. The survey further reveals that, of

these 1,432,000 trucks, 756,100 trucks (53%) were classified as local service vehicles defined as: "Mostly in the local area, i.e., in or around the city and suburbs, or within a short distance of the farm, factory, mine or other place where the vehicle is stationed."

62. The Reno affidavit similarly is misleading in representing that Pennsylvania-registered vehicles traveled 651,956,107 miles in Pennsylvania. *See* page R-10 and Exhibit R-1 thereof. Respondents themselves admit that figure does not include vehicles which travel 90 percent or more of their mileage in the Commonwealth. *See* Reno affidavit, page R-10, footnote 1. If Respondents had included the Pennsylvania mileage for Pennsylvania-registered vehicles traveling 90% or more of their miles within Pennsylvania that mileage figure would increase the total miles traveled in Pennsylvania by Pennsylvania-registered vehicles by more than one and one-half billion miles. See Exhibit C hereto. Even the SYDEC group, upon which Respondents so heavily rely, recognizes this shortcoming by estimating an additional 935,000,000 miles operated in Pennsylvania by Pennsylvaia-based carriers which experience at least 90% of their mileage in Pennsylvania. *See* Exhibit S-4 to the Stowers affidavit where this mileage is added to the mileage reported in Exhibit R-1 to the Reno affidavit. Even by their own estimate, over 50% of the truck travel in Pennsylvania is by Pennsylvania-based and registered trucks. Their estimate, however, is low when compared to the data on which the Pennsylvania Department of Transportation relies in conducting its highway planning (see Exhibit C).

63. Further, it is confusing and misleading to state that "36 percent of travel by tractor-semitrailer trucks in Pennsylvania was on the Interstate System, while 64 percent was on the principal arterial, collector, and local roads." *See* Reno affidavit paragraph 20 and page R-28 under Appendix R-5. There is no reference in what the

Respondents say regarding which trucks are traveling on which roads; *i.e.*, there is no distinction between Pennsylvania-registered trucks' travel and the travel of foreign-registered trucks; between intrastate truck travel or trucks that travel most of their miles within Pennsylvania and travel done by interstate vehicles, except for a misleading, inaccurate, unsubstantiated and intentionally confusing statement that "the majority of [the] mileage [accrued in Pennsylvania by combination trucks of over 40,000 pounds] is devoted to interstate travel." Reno affidavit, page R-26. If Respondents mean that most of the Pennsylvania miles accrued on the non-interstate roads was accrued by vehicles other than trucks engaged in intrastate travel, they are incorrect and there is no evidence to support that allegation. If they mean that most of the Pennsylvania miles accrued on the non-interstate roads was accrued by vehicles traveling both in and out of Pennsylvania, they are incorrect and ignore the facts that: a) Pennsylvania-registered vehicles which travel 90% or more of their miles within Pennsylvania account for an enormous number of Pennsylvania miles; and b) Pennsylvania-registered vehicles used the roads of the Commonwealth more than foreign-registered vehicles—accounting for approximately 65% of the total miles traveled by all vehicles on the roads of Pennsylvania in 1979. If, however, Respondents mean that most of the trucks which travel in Pennsylvania accrue most of their miles outside of Pennsylvania, Petitioners agree.

64. Respondents' statements that a) all reciprocity states on Exhibit R-1 travel 900 million miles in Pennsylvania and b) all other IRP states on Exhibit R-1 travel 500 million miles in Pennsylvania are inapposite. First, Pennsylvania- registered vehicles themselves travel millions of miles in states with which Pennsylvania has reciprocity agreements similiarily without paying registration fees to those states. Second, the 900 million miles, even if accurate, pales before the more than two

billion miles traveled in Pennsylvania by Pennsylvania-registered vehicles. See paragraph 62. Third, because of the proportional registration aspect of the IRP, the figure of "500 million vehicle miles" has no meaning in this context because Pennsylvania *does* receive proportioned registration fees for that total mileage whether the vehicles traveling those miles are base-registered in Pennsylvania or in anothr IRP jurisdiction.

/s/ Douglas A. Hughes
DOUGLAS A. HUGHES

Washington, D.C.
Sworn to and subscribed
before me this 15th day
of November, 1984

/s/ Joseph L. Johnson
NOTARY PUBLIC

My commission expires:
My Commission Expires April 30, 1985

REGISTRATION FEE CHANGES, 1980-83

Class	Registered Gross or Combination Weight in Pounds	Act 1980-68 Changes ($) 1/ Old	New	Amount Increase ($)	Act 1982-234 Changes ($) 2/		Amount of Decrease ($)	Overall Change (Pre Act 1980-68 to past Act 1982-234) ($)
1	5,000 or less	39		None	$ 39		None	None
2	5,001-7,000	[52]	54	2	54		None	+2
3	7,001-9,000	[84]	102	18	102		None	+18
4	9,001-11,000	[108]	132	24	132		None	+24
5	11,001-14,000	[132]	162	30	162		None	+30
6	14,001-17,000	[156]	192	36	192		None	+36
7	17,000-21,000	[192]	237	45	237		None	+45
8	21,001-26,000	[216]	270	54	270		None	+54
9	26,001-30,000	[252]	315	63	[315]	243	72	-9
10	30,001-33,000	[300]	378	78	[378]	306	72	+6
11	33,001-36,000	[324]	414	90	[414]	342	72	+18
12	36,001-40,000	[342]	438	96	[438]	366	72	+24
13	40,001-44,000	[360]	465	105	[465]	357	108	-3
14	44,001-48,000	[384]	501	117	[501]	393	108	+9
15	48,001-52,000	[420]	552	132	[552]	444	108	+24
16	52,001-56,000	[444]	588	144	[588]	480	108	+36
17	56,001-60,000	[501]	666	165	[666]	558	108	+57
18	60,001-64,000	[552]	741	189	[741]	597	144	+45
19	64,001-68,000	[576]	777	201	[777]	633	144	+57
20	68,001-73,280	[606]	834	228	[834]	690	144	+84
21	73,281-76,000		1065	[ ]	[1065]	885	180	[ ]
22	76,001-78,000		1089	N/A	[1089]	909	180	N/A
23	78,001-78,500		1101	Newly Created	[1101]	921	180	Newly Created
24	78,501-79,000		1113	Weight Classes	[1113]	933	180	Weight Classes
25	79,001-80,000		1125	[ ]	[1125]	945	180	[ ]

1/ Source: Act 1980-68, § 2, effective August 17, 1980.

2/ Source: Act 1982-234, § 1, effective April 1, 1983.

EXHIBIT "A"

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

May 1, 1984

LeRoy S. Zimmerman
ATTORNEY GENERAL

Reply To:

15th Fl., Strawberry Square
Harrisburg, PA 17120
(717) 783-1471

Arthur R. Littleton, Esquire
Morgan, Lewis & Bockius
2000 One Logan Square
Philadelphia, PA 19103

Re: Axle Tax Matter

Dear Mr. Littleton:

In response to your letter of February 15, 1984, we provide the following information which you have requested (see paragraph 2 of that letter). Please note that some answers are estimates of limited accuracy and reliability. They cannot be used without reference to those limitations.

2a. *The total number of motor carrier vehicles for which the Axle Tax for Highway Bridge Improvement ("Axle Tax") of 75 Pa. C.S. § 9901, et seq., was paid in 1983.*

403,656. This answers assumes that "1983" refers to the 1983 axle tax year of April 1, 1983 to March 31, 1984. This number reflects axle tax payments made from January, 1983 to date.

2b. *A breakdown of the total number of motor carrier vehicles for which the Axle Tax was paid in 1983 by the*

number of axles for which the tax was paid (for example, two axles, three axles, four axles, etc.).

2 axles:	37,709
3 axles:	19,842
4 axles:	48,028
5 axles:	290,741
6 axles:	6,963
7 axles:	289
8 axles or more:	84
TOTAL:	403,656

2c. *The total number of all motor carriers which paid the Axle Tax for their motor carrier vehicles in 1983.*

No exact number can be computed, for the reasons described below:

The Vehicle Code defines a motor carrier as "every person who operates or causes to be operated any motor vehicle on any highway in this Commonwealth." 75 Pa. C.S. § 9901. Therefore, a registrant of a Pennsylvania vehicle who does not actually operate the vehicle would be considered a motor carrier because he "causes" the vehicle to be operated by his ownership.[1] For purposes of this response it is assumed that the Petitioner is concerned with the person who operates the vehicle, not the person who "causes" the operation.

Department of Transportation records pertain to individual vehicles and registrants. The registrant may or may not actually *operate* the vehicle. Accordingly, it

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[1] Many trucking companies own and operate their own trucks. In other instances, lessors lease trucks to trucking companies. In the latter cases the lessor and lessee are both "motor carriers" as defined in the Vehicle Code: lessor "causes" the vehicle to be operated by his ownership and the lease, while the lessee actually "operates" the vehicle. Between the lessor and lessee, however, the axle tax on the truck is paid only once, at the time of registration.

is not possible to identify the motor carrier from Transportation records.

The Department of Revenue maintains motor carriers road tax accounts. A "motor carrier" is defined the same as in the Vehicle Code. Generally, the motor carrier maintaining the account is the *operating* carrier. While a single carrier could have more than one account, in general each carrier has only one account.

Two types of road tax accounts exist. First, *regular accounts* include carriers who regularly travel into other states. Carriers in this category file quarterly reports of fleet mileage everywhere and in Pennsylvania, total fuel used in all operations of the fleet, and fuel purchases in Pennsylvania. Second, *annual accounts* include carriers whose vehicles are registered in Pennsylvania, travel at least 90% of their mileage annually in Pennsylvania, and purchase sufficient fuel in Pennsylvania to cover that mileage.

Road tax accounts include all vehicles over 17,000 pounds registered gross weight. The axle tax data maintained by the Department of Revenue has been inserted into the existing road tax file structure by expanding the information in each file. Accordingly, a separate axle tax account by carrier does not exist. In order to identify the number of motor carriers who paid the axle tax in 1983, it is necessary to eliminate from the total number of road tax accounts the number of such accounts in which axle tax was not paid because the carrier had no vehicles over 26,000 pounds.

The total of the regular and annual accounts that indicate axle tax payments would fairly approximate the number of motor carriers paying axle tax.

Based upon data available as of March 28, 1984, the Revenue Department *estimates* that approximately 88% of regular accounts show an axle tax payment on at least one vehicle. (1983 data has already been removed from

the computer system which could perform the necessary analysis.) In 1983 there were 30,269 regular accounts. Accordingly, it is estimated that 26,637 motor carriers with regular accounts paid the axle tax in 1983, on at least one vehicle.

In 1983 there were 7,128 annual accounts. Due to the local nature of the business done by these accounts, as indicated by the limited extent of their range of operation, it is estimated that a large portion are smaller trucks under 26,001 pounds and not subject to the axle tax. No data is available even to estimate that portion. Thus, the best available estimate of the total number of motor carriers which paid the Axle Tax in 1983 is something over 26,637. Again, this refers to motor carriers which paid the axle tax for at least one vehicle.

2d. *The total number of motor carrier vehicles exceeding 26,000 pounds GVW which were registered in the Commonwealth of Pennsylvania and for which the Axle Tax was paid in 1983.*

83,118. This number includes apportioned registered vehicles.

2e. *A breakdown of the total number of Pennsylvania-registered motor carrier vehicles exceeding 26,000 pounds GVW which paid the Axle Tax for 1983 by the number of axles for which the tax was paid (for example, two axles, three axles, four axles, etc.)*

2 axles	20,039
3 axles:	10,702
4 axles:	19,181
5 axles:	31,927
6 axles:	1,100
7 axles:	137
8 axles or more:	32
TOTAL:	83,118

(This includes apportioned registered vehicles. See paragraph 2d above.)

2f. *The total number of motor carrier vehicles in excess of 26,000 pounds GVW which were registered in the Commonwealth of Pennsylvania in 1983.*

84,195. This includes apportioned-registered vehicles.

2g. *The total number of all motor carriers which registered motor carrier vehicles in excess of 26,000 pounds GVW within the Commonwealth in 1983.*

No number can be computed. As is explained in paragraph 2c above, Department of Transportation records pertain to individual vehicles and registrations. The registrant may or may not actually *operate* the vehicle. Accordingly, it is not possible to identify the motor carrier from Transportation records.

2h. *The number of motor carrier vehicles for which the Axle Tax was paid in 1983 which were registered in jurisdictions that are members of the International Registration Plan.*

No accurate answer can be provided.

The Department of Transportation has no information on the number of vehicles registered in other IRP jurisdictions.

The Department of Revenue does not record individual vehicle data and is unable to provide an accurate or reliable estimate. Based upon the mailing address of the motor carriers road tax accounts, as indicated in Revenue records, 126,466 axle tax markers were issued in 1983 to road tax accounts with a mailing address in an IRP jurisdiction. While the state indicated in the mailing address may be the state in which the vehicles (for which the axle tax markers were purchased) are registered, any number of the vehicles could actually be registered in other states. This method appears to have very low reliability.

2i. *The number of Pennsylvania-registered motor carrier vehicles in excess of 26,000 pounds GVW which did not apportion registration with any other jurisdiction in 1983.*

66,788.

If you have any questions concerning these matters, please feel free to contact me.

Very truly yours,

/s/ Maura A. Johnston
MAURA A. JOHNSTON
Deputy Attorney General

MAJ/esm

SUPREME COURT OF THE UNITED STATES

No. 86-357

AMERICAN TRUCKING ASSOCIATIONS, INC., *et al.*,
Appellants

v.

JAMES I. SCHEINER, Secretary,
Department of Revenue, *et al.*

APPEAL from the Supreme Court of Pennsylvania, Middle District.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

November 10, 1986